



Costs Decision

Site visit made on 10 October 2023

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2024

Costs application in relation to Appeal Ref: APP/F1610/D/23/3321255 19 Quail Meadows, Tetbury GL8 8PQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mrs Rose Jones for a full award of costs against Cotswold District Council.
- The appeal was against the refusal of planning permission for new boundary fence.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process.
3. The PPG advises that all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceedings, behaviour, and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. The evidence put forward as part of a Costs Award should not be taken into consideration as evidence for the connected planning appeal.
4. It is important that Local Planning Authorities substantiates its reasons for refusal. This was carried out by the Case Officer which included an analysis of the proposal. The weight given to each consideration is a matter of planning judgement, and the courts have held that the weight attributed to the material considerations of a case is a matter for the decision maker.
5. The refusal reason refers to Appendix D Cotswold Design Code of the Cotswold District Local Plan 2011-2031. Within the Officer's Report the council referred to sections of Appendix D that were considered to be relevant and as such, in this instance, the council has not made an unspecified reference to the Cotswold Design Code within the refusal reason. Both the decision notice and the Officer's Report should be read together, and both form the basis for the council's evidence.
6. I did not read the Officer's Report as giving D.55 of Appendix D precedence over all other relevant policy. Whilst the council does appear to contradict itself, the terminology used identifies its case that timber fencing is a 'contextual aspect of the immediate area' but 'is not a prominent form of boundary treatment within the surrounding housing estate.' My reading of this

is that whilst there are timber fences in the area, they are not the prominent form of boundary treatment. Within the area the boundary treatment can consist of shrubs, hedgerows as well as timber fencing. Accordingly, this assessment of the context is not necessarily incorrect. The Officer's Report then went on to provide a planning judgement as to why the council considered fencing built close to the highway would be harmful to the character and appearance of the area, in this instance.

7. While I have reached a different conclusion to the council, its arguments were sufficiently well made, and were not fundamentally unreasonable or untenable. The decision by the council to refuse permission was not therefore unreasonable behaviour.
8. Furthermore, notwithstanding why the fence was removed from the previously approved application, the advice given at pre-application stage or even outside of this process is typically given 'without prejudice'. The emails from the council submitted with this appeal confirm this. Whilst justification should be provided where a decision conflicts with advice, I am satisfied that the Officer's Report did this.
9. I appreciate that the applicant was disappointed with the council's handling of the application, and the subsequent outcome. The National Planning Policy Framework does set out an expectation for councils to work proactively with applicants. However, having regard to the council's conclusions I cannot be clear that discussion on the merits of the proposal would have resulted in a different outcome. Nevertheless, on the face of it, it does appear unreasonable that the council took so long to make its decision for which there seems to be no clear reason set out. However, even if the council had made its decision earlier this would not have avoided the appeal given its conclusions with regard to the fence.
10. Accordingly, the council's behaviour and actions at the time of the planning application or during this appeal have not resulted in unreasonable behaviour that has led to unnecessary or wasted expense in the appeals process. Therefore, an award of costs is refused.

G Sibley

INSPECTOR