



Costs Decision

Site visit made on 21 November 2023

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Costs application in relation to Appeal Ref A: APP/F0114/W/23/3318952 92 London Road West, Lower Swainswick, Bath BA1 7DA

- 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 Lewis & Hyde for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for the conversion and extension of existing outbuilding into a dwelling with off-street parking.
-

Costs application in relation to Appeal Ref B: APP/F0114/W/23/3318954 92 London Road West, Lower Swainswick, Bath BA1 7DA

- 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 Lewis & Hyde for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for the conversion and extensions of 92 London Road West into two dwellings with off-street parking.
-

Costs application in relation to Appeal Ref C: APP/F0114/W/23/3318958 92 London Road West, Lower Swainswick, Bath BA1 7DA

- 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 Lewis & Hyde for a full award of costs against Bath & North East Somerset Council.
 - The appeal was against the refusal of planning permission for the erection of a pair of semi-detached dwellings with off-street parking and gardens.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that awards may be procedural relating to the appeal process, or substantive relating to the planning merits of the appeal. All parties are expected to behave reasonably throughout the planning process,

and costs can only be awarded in relation to unnecessary or wasted expense at the appeal. The Guidance makes it clear that costs cannot be claimed for the period during the determination of the planning application, although behaviour of the parties at this time can be taken into account.

4. The application for a full award of costs and the response of the Council have been made in writing and will not be repeated here in any detail. The appellants consider the Council have behaved unreasonably procedurally and substantively. Procedurally there was a lack of co-operation and proactive working from the Council, incorrect and inconsistent consideration of the applications, fresh and substantial evidence was presented at a late stage, a new reason for refusal was introduced with the appeals, and information that was manifestly inaccurate and untrue was provided, including deliberate concealment of evidence. Unreasonable substantive behaviour occurred through the failure to provide evidence to substantiate the reasons for refusal, refusing schemes that were capable of being dealt with by conditions, acting contrary to or not following well established case law, not determining similar cases in a consistent manner, and refusing to provide reasonably requested information.
5. My decisions explain that I have found substantive reasons for dismissing the appeals. In each case the Council gave clear and precise reasons for refusal, based upon the evidence provided, and upon the requirements of the development plan and national policy that was current at the time, and also upon the recommendations received from consultees. At the appeals stage the Council explained and substantiated each reason for refusal. Neither the Council's refusal of the applications nor the appeals evidence was vague or generalised. Although the appellants consider the Council acted contrary to case law, no references to any judgement have been provided to demonstrate this.
6. Despite different descriptions for each application the same suite of drawings was submitted for each scheme with the red site lines excluding the private road. The National Planning Policy Framework makes the six tests for conditions clear, and these criteria include precision and reasonableness. Given the extent of the unresolved issues and ambiguities, imposing conditions would not be reasonable, particularly given the position of the site within a conservation area upon a steeply sloping hillside and the proposed use of a private road. Furthermore, the complexity of the outstanding matters, including their interrelationship, is such that no certainty arises as to whether any of the issues the appellants required to be conditioned could be satisfactorily addressed. Consequently, the Council could not have issued permission for any one scheme, and it follows therefore, nor for any combination, particularly as to do so would have required relying on a drawing which contained errors (drawing ref: Individual Application Developments S119).
7. Many of the procedural concerns of the appellants derive from the Council's consideration of the original applications, and there appears to have been extensive discussion between the main parties, including responding to issues as they arose. The appellants consider the Council deliberately concealed evidence, but at the appeals stage the Council have justified their reasoning and this includes an explanation as regards the consistency of its decision making concerning nearby sites. It was not unreasonable of the Council to

- determine the applications on the basis of the evidence before it, and this would have included having regard to the advice arising from consultations with various experts. The extensive communication between the main parties would have significantly increased the time it took to process the applications.
8. The appellants also consider the Council introduced evidence at a late stage. However, the Council's appeals statement provides clear reasoned justification for its decisions. This includes references to garden size and also exiting onto a public highway. The former would be pertinent to character and appearance considerations and both this and matters of land ownership were issues raised with the applications.
 9. The Council did introduce an additional reason for refusal at the appeals stage, explaining this was in response to the adoption of a new development plan, and this would have necessitated a response from the appellants. As the decision maker is obliged to determine a case in accordance with the development plan, it was not unreasonable of the Council to address this matter as it arose.
 10. The consideration of applications involves matters of judgement that are at times finely balanced based on complex evidence. In this case the schemes raise several considerations, and the Council gave a different weight to the issues than the appellants, but this was not unreasonable. Consequently, the decision to submit the appeals would have been one for the appellants to make.
 11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. Accordingly the application for an award of costs is refused.

J J Evans

INSPECTOR