
Costs Decision

Site visit made on 18 December 2023

by C Rose BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

**Costs application in relation to Appeal Ref: APP/Q3305/W/23/3323389
The Forge Cottage, Dark Lane, North Wootton, Shepton Mallet, Somerset
BA4 4AQ**

- 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 Mr & Mrs Matthew & Cassia Stevens for a full award of costs against Mendip District Council.
 - The appeal was against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

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

Reasons

2. 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 appeal process.
3. The applicant is applying for a full award of costs. The applicant considers that the Council acted unreasonably by introducing new reasons for refusing the application that run contrary to the reasons given for including those conditions on the original planning approval. This is despite no change to planning policy in the intervening period and the Council confirming that the stated reasons for refusal have been met. The applicant states that the removal of condition application should have been approved as not all of the 'six tests' in paragraph 56 of the National Planning Policy Framework (the Framework) have been met.
4. In response, the Council state that the effect of granting the application would have been to allow an unjustified dwelling in the countryside contrary to planning policies which seek to protect the countryside and promote sustainable development. The Council further states that it correctly applied the relevant policies and that had the applicant applied to remove condition 4 only, this would have been acceptable, but they were not able to issue a split decision.
5. Whilst concerns regarding the removal of conditions usually stem from the reasons given for the conditions when permission was granted, a Council may argue as part of an application to remove conditions that the conditions are necessary for different or additional reasons. This is what the Council have done in this case in relation to condition number 3. Consideration of the main

appeal and application for costs must be based on current local and national planning policies whether the applicant/appellant is aware of them or not. As a result, consideration of the removal of conditions is not confined to the original reasons for imposing the conditions.

6. The Council's case is clear and supported by evidence and references relevant local and national planning policies and guidance. The Council have a duty to consider the proposal on its merits and in light of the above and the evidence submitted by the Council detailing their concerns with the removal of condition number 3, I cannot agree that the Council acted unreasonably.
7. Although I have found in favour of the applicant with regard to the removal of condition number 4, I note that the Council would have agreed to the removal of the condition were they able to issue a split decision or consider the removal of that condition in isolation. As a result and given that the Council have been clear that they would have allowed the removal of condition number 4 in isolation, this does not represent unreasonable behaviour.
8. In light of the above, I do not find that the Council acted unreasonably by introducing new reasons for refusing the application that were different to the original reasons for imposing condition number 3. In addition, the Council were clear with regard to their position in relation to condition number 4.
9. Accordingly, I find that unreasonable behaviour in procedural or substantive terms resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
10. The application for an award of costs must therefore fail.

C Rose

INSPECTOR