



Costs Decision

Site visit made on 9 November 2023

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Costs application in relation to Appeal Ref: APP/N2739/D/23/3322648 Station House, Wetherby Road, Newton Kyme, Tadcaster LS24 9LT

- 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 and Mrs S Dexter for a full award of costs against Selby District Council.
 - The appeal was against the refusal of planning permission for: 'Erection of 2 storey outbuilding to front of dwellinghouse to act as garages and storage'.
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Decision

1. The application for a full award of costs is refused.

Preliminary Matters

2. As set out in my decision, on 1 April 2023 North Yorkshire Council was created and is now the Local Planning Authority (LPA) for the area previously covered by Selby District Council.

Reasons

3. 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 appeal process.
4. Paragraph 49 of the PPG makes clear that local planning authorities are at risk of an award of costs if they prevent or delay development that should clearly be permitted, fail to produce evidence to support each reason for refusal on appeal, or make vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. The applicants' principal concern relates to the Council failing to acknowledge during discussions as part of the application process that permitted development as a fallback position is capable of being a consideration that could be weighed against Green Belt harm (and any other harm) as part of determining whether very special circumstances exist.
6. The Council's approach within these discussions is alluded to in its report which sets out that: '*Justifying large extensions to dwellings or the erection of new ancillary buildings which are inappropriate in the Green Belt on the grounds that more harmful development could occur under permitted development rights is a common circumstance which could apply to many cases for inappropriate development in the Green Belt. As such it is not considered to be a VSC.*'

7. Case law has established that there should be a 'real prospect' of a fallback being implemented and that the decision-maker should exercise their planning judgment as to whether that would be the case depending on the particular circumstances. However, to be a material consideration, the prospect of the fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect.
8. I agree with the applicants that dismissing a fallback position outright on the grounds that it is too common could amount to unreasonable behaviour. However, in its delegated report, the Council does then go on to assess the fallback scheme against the appeal proposal. It states '*Although larger in terms of footprint and volume it would be much lower in height and would sit alongside and closer to the existing dwelling within the garden area. Spatially it would result in greater harm to the green belt but visually it would be less due to its position, height and form.*' It also concludes that the appeal scheme would result in greater harm to the character and appearance of the area. I concluded similarly.
9. Therefore, when assessing whether there were very special circumstances, a reader of the report would be left in no doubt that the fallback scheme had been weighed in the balance and, that it would have resulted in less harm than the appeal scheme, in the opinion of the Council. Furthermore, the reasons for refusal are clear and set out unequivocally the concerns of the Council. Therefore, based upon the evidence before me, including the report, there is nothing that would indicate that the Council would have arrived at a different decision had it not included the reference to the fallback being '*a common circumstance*' in its report. Furthermore, I concluded that very special circumstances did not exist for the reasons set out in my decision. Therefore, irrespective of the Council's reference to whether a fallback was too common, the outcome for the applicants has remained unchanged.
10. Notwithstanding the above, there is no statutory duty on the Council to provide advice to an applicant during the period that the application is under consideration. It is nonetheless good practice for a Council to clearly outline its concerns prior to issuing any decision, which appears to have been the case here. Whilst I sympathise with the applicants regarding the change in recommendation, I note that the Council informed the applicants of this and provided their reasons.
11. The applicants highlight that the application took 13 months to determine. The PPG sets out that if it is clear that a local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. This appears to have been done, with it being clear from the copies of numerous emails that I have been provided with that the Council requested amended plans and provided advice as to how to address its concerns as well as potential timescales.
12. Whilst the delay in determining the application is regrettable, it is nonetheless apparent that there was reasonably regular contact during the application process. Furthermore, the Council provided its evidence within the requisite appeal timescale.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul Martinson

INSPECTOR