



Costs Decision

Site visit made on 2 April 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 May 2024

Costs application in relation to Appeal Ref: APP/M1005/W/23/3332006 Pingle Cottage, 31 Milford Road, Duffield, Belper, Derbyshire, DE56 4EL

- 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 Dr Alastair McCance for a full award of costs against Amber Valley Borough Council.
 - The appeal was against the refusal of planning permission for detached two bedroom bungalow without complying with conditions 2 and 5 attached to planning permission Ref AVA/2008/0036, dated 21 February 2008.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 appeal process.
3. The appellant's application for costs is on the basis that the Council has acted unreasonably by making vague assertions about the proposal's impact, which is unsupported by any objective analysis.
4. There are, in essence, two elements to the Council's single reason for refusal of planning permission. One element relates to the effect of the proposal on the character and appearance of the area, which includes concerns regarding over development. The second element relates to the effect of the proposal on living conditions.
5. The Council identifies the character of the neighbourhood as including large gardens and an absence of plot subdivision. However, it has not recognised that garden sizes vary significantly and that large gardens are not a predominant feature of the area. Accordingly, the Council's identification of harm is established from a limited, and not fully representative, analysis of the character and appearance of the area. Furthermore, the proposed subdivision of the plot, and the small gardens that would be formed, would not, inevitably, be harmful, and the Council has presented no objective analysis to demonstrate that it would. Thus, it has failed to substantiate this element of the reason for refusal.
6. I have also concluded differently to the Council in my Appeal Decision regarding the element of the reason for refusal relating to noise and disturbance. Nonetheless, the change in the nature of the occupation of the appeal property and associated activities are valid considerations and are

matters that are relevant to any assessment of the effect of the proposal on living conditions. In respect of such concerns, a brief, but nonetheless, reasonable case based on relevant planning considerations was put forward by the Council and, as such, I find no unreasonable behaviour by the Council in this respect. Its position was a legitimate exercise of planning judgement that does not, necessarily, require the input of an expert, such as an Environmental Health Officer.

7. A recent example of an award of costs against the Council has been provided. However, as I do not have full details, I cannot be certain that the information before that Inspector was comparable to that which is before me. It does not, therefore, demonstrate that the Council is regularly falling short in its behaviour and conduct and that a full award of costs is justified in this case. Accordingly, I have determined this cost case on its merits.
8. For the above reasons I do not find that the application for a full award of costs is justified. Nevertheless, I find that some unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A partial award of costs is therefore justified insofar as it relates to the element of the reason for refusal regarding concerns the effect of the proposal on the character and appearance of the area.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Amber Valley Borough Council shall pay to Dr Alastair McCance, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the element of the reason for refusal regarding the effect of the proposal on the character and appearance of the area; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Amber Valley Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elaine Moulton

INSPECTOR