



Costs Decision

Site visit made on 24 April 2024

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Costs application in relation to Appeal Ref: APP/B9506/D/23/3328308 Passford Farm Cottage, The Lodge Annexe, Southampton Road, Boldre, Hampshire SO41 8ND

- 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 Penelope Hill for a full award of costs against New Forest National Park Authority.
- The appeal was against the refusal of planning permission for roof alterations; recladding; alterations to doors and windows; new porch; relocating of 2 no.sheds; new 1 metre high fence with gate without complying with conditions attached to planning permission Ref 22/00566, dated 15 November 2022.

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 appeal process.
3. The application essentially relies on the fact that the Council has incorrectly determined the original application as it has applied the wrong test in that it refused the application on the basis that the proposed and implemented changes were considered to fall outside the scope of minor material amendments and the relevant development policies referred to in the reasons for refusal are irrelevant.
4. In relation to whether the proposed and implemented changes involve a minor material amendment, the applicant points out that the Council's approach is contrary to caselaw.¹ Given that the relevant judgment is recent and has been well publicised, the applicant considers that the Council should have been aware of the proper approach to considering an application under section 73 of the Town and Country Planning Act 1990 (s73 of the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
5. In relation to whether the proposed and implemented changes involve a minor material amendment, I agree that the Council sought to apply a test that was not supported by the legislation and related case law. However, it did make some arguable points in addition to this which questioned whether the scheme could be considered under s73 of the Act. I have examined these matters in

¹ Armstrong v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 142 (KB)

the planning appeal decision and consider that they were arguable, although I have come to a different decision to the Council.

6. Furthermore, the concerns with whether the scheme could be considered under s73 of the Act was not the only reason given by the Council for refusing the application. The Council also set out that the proposal was in conflict with Policies DP 35 and DP 36 of the New Forest National Park Local Plan 2016-2036 adopted August 2019.
7. In summary, in respect of the merits, the Council reached the view that the proposed introduction of a 1 metre wall on either side of the existing open porch would amount to infilling of the porch which in turn would increase the floor space of the appeal property resulting in an extension. Similarly, they considered that the replacement of timber cladding on part of the rear elevation with red stock bricks amounted to the appeal property being either rebuilt or substantially altered and therefore being tantamount to a replacement dwelling. These are matters of planning judgement and the Planning Report makes a sufficient case to support this view and the related elements of the reason for refusal. This judgement is supported by specific reference to policies of the development plan. While I have come to a different judgement on the planning merits, I consider that the approach of the Council was arguable and, therefore, refusing the application for these reasons does not meet the bar of being unreasonable behaviour.
8. Drawing all these matters together, I have found that the Council made a sufficient case with regard to s73 of the Act in relation to the matters that I have identified, although it did not follow the correct approach when it referred to minor material amendments. The scheme was also refused based on a conflict with development plan policies and whether or not there was such a conflict is a matter of planning judgement. The Council made a satisfactory and proportionate case in this respect. Therefore, in any event, even if there was not the concerns with approach of the Council regarding the application of s73 of the Act, an appeal could not have been avoided.
9. In my judgement, when considered in the round, the Council's case was sufficient to raise concerns with the application of s73 of the Act and argue that planning harm, contrary to the development plan would result. Overall, I do not consider that the Council has acted in such a way that it should be considered to be unreasonable behaviour that has led to unnecessary or wasted expense in the appeal process to justify an award of costs.

Conclusion

10. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

S Rawle

INSPECTOR