



Costs Decision

Hearing held on 6 August 2024

Site visit made on 6 August 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2024

**Costs application in relation to Appeal Ref: APP/Y3940/W/24/3337786
Ski's Trees Compound & Yard, Adjacent to Blackfords Industrial Estate,
Greenhill, Royal Wootton Bassett SN4 8EH**

- 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 Neil & Emma Jarmolinski for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for erection of security lodge and associated works.
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Decision

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

The submissions for Mr & Mrs Neil & Emma Jarmolinski

2. The costs application was submitted in writing. No additional points were made orally.

The response by Wiltshire Council

3. The response was made in writing. No additional points were made orally.

Reasons

4. 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.
5. The applicants consider the Council has exhibited unreasonable behaviour that is both procedural and substantive in nature.
6. In relation to procedure, they contend the decision-making process was slow; communication with them, via their architect/agent, was poor; the application was not processed in a proactive way in accordance with paragraph 38 of the Framework; and the Planning Officer did not make effective use of the site visit. In addition, they are concerned the Council took into account consultation responses from the Highways Officer and Wiltshire Police Designing Out Crime Officer (WP), although they were not specifically identified on the list of consultees document. They argue the WP representation, which was dated the day before the application was refused, was not brought to their attention or that of their architect/agent prior to the decision being taken. Consequently, the applicants say they were denied the right of reply to it or the opportunity to follow up the Police's offer of crime prevention advice.

7. In relation to the substance of the matter under appeal, the applicants argue the WP representation was inaccurate with respect to the security measures that were in place at the time of the break-ins and theft in 2022, and that it was consequently misleading. They therefore consider the Council gave inappropriate weight to this representation and did not fully understand the circumstances surrounding the application when taking its decision.
8. The time taken to process the planning application clearly exceeded statutory time limits. However, on the evidence before me the Council sought and secured agreement to extensions of time in accordance with article 34 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). In addition, even if communication was not always as prompt as it could have been, the Council was proactive in seeking additional information from the applicants. For example, they asked questions about the security of the site and consideration of alternative options in their email of 19 September 2023.
9. In relation to the site visit, I am satisfied on the evidence before me that the Planning Officer used this to gather evidence and information about the site and surrounding area. The visit was therefore undertaken in a manner consistent with Wiltshire Council's published information on the stages of a planning application. There was no obligation on the Officer to ask for information from the applicant during the visit and it was reasonable for her to want to discuss her observations with a more senior officer. Further information was subsequently requested in writing via the applicants' agent, which was also a reasonable approach.
10. The Highways Department at Wiltshire Council is a statutory consultee, so the Council was required to consult them.
11. The PPG¹ makes clear that, in addition to statutory consultees, local planning authorities will need to consider whether there are planning policy reasons to engage other consultees who are likely to have an interest in a proposed development. Consultation with non-statutory consultees can be directed appropriately to avoid unnecessary consultation.
12. In this case, given security was central to the planning merits of the application, it was reasonable for the Council to consult WP in a non-statutory capacity, whether or not they were specifically identified on a consultation list. There was no requirement for the Council to allow the applicants a right of reply to the Police's comments or to encourage the Police to provide advice directly to them. That said, I recognise the scope for clearer communication about this aspect of the proposal could have been greater had WP comments been sought earlier in the process.
13. Nevertheless, this does not amount to unreasonable behaviour on the part of the Council in relation to its consultation procedure.
14. As regards the substance of the Council's decision, in my opinion the decision report gives a broadly fair account of the comments from WP and does not place undue weight on their suggestion that palisade fencing had been installed since the 2022 break-ins. The report considers the WP comments alongside evidence from the applicants. The identified gaps in both functional and

¹ Paragraph: 022 Reference ID: 15-022-20140306

financial evidence would have been present even if the WP comments had not mentioned the palisade fencing. Therefore, whether or not there was a factual error in the WP comments, it was not determinative. Overall, I find the Council's report demonstrates a reasonable understanding of the circumstances surrounding the application.

15. For the above reasons, I conclude unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

C Carpenter

INSPECTOR