



Costs Decision

Site visit made on 17 July 2024

by H Faulkner BSc(Hons) MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2024

Costs application in relation to Appeal Ref:

APP/D1265/W/23/3333960

2 Queens Road, Blandford Forum, Dorset DT11 7JX

- 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 Lawsh Limited for a full award of costs against Dorset Council.
 - The appeal was against the refusal planning permission for the demolition of garage; new dwelling with parking and associated development.
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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. The engagement of a planning consultant to defend an appeal is not itself an unnecessary cost unless unreasonable behaviour on the part of the Council can be demonstrated.
3. Unreasonable behaviour on the part of a local planning authority may include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, acting contrary to, or not following, well-established case law, or not determining similar cases in a consistent manner.
4. On the substantive grounds the applicant's claim is that the Council acted unreasonably in the following ways: their consideration of overlooking from a window in the northeast elevation during the appeal, failing to accept the benefits of the scheme in respect of location and housing supply, assessment of available amenity space and failure to consider other backland development nearby.
5. The Council has not provided a response to the application for costs.
6. In respect of the first floor window on the north east elevation. The submitted plans show roof lights on both pitches and a window in both the northeast and south west elevations at first floor level. Overlooking from the window in the northeast elevation is referenced on p17 of the Officer Report as well as in the second reason for refusal along with the roof lights. A response to this is provided in paragraphs 1.30 to 1.34 of the Statement of Case.

7. The Council's response to the Statement of Case is relatively short and only briefly summarises the contents of the Officer report. Whilst the Council reference the overlooking from the roof lights only, I do not take this to explicitly mean that they abandoned any other overlooking concerns in relation to the other window. The overlooking issues are clear in the Officer report and the appellant was right to respond to them as part of their case. I do not find that the Council have acted unreasonably on these grounds.
8. The applicant states that the Council have not considered the benefits of the scheme particularly with regard to the accessible location and the contribution to housing supply. The applicant highlights what they consider to be the benefits of the scheme in paragraphs 1.27 – 1.32 of the Design and Access Statement. The Council does not mention these benefits specifically either within their Officer Report or appeal statement. Being in an accessible location is absence of harm in terms of accessibility rather than a positive benefit. In any event, given the Council's objections to the scheme, it would appear unlikely that they would have reached a different decision and therefore that an appeal would have been avoided. Based on the evidence before me it has not been demonstrated that the applicant by addressing the matter in their submissions that there was any wasted expense in doing so.
9. In terms of amenity space provision, the Officer Report states that the development 'constitutes over development of the site and provides insufficient amenity space such as the site of the garden'. The applicant provides a response to this reasoning that the proposal meets the Council's requirements in terms of Space Standards for drying lines. Whilst this is a useful measure the provision of drying space is not in itself solely a measure for considering if an amenity area is of a sufficient size for the enjoyment of future occupiers. I agree with the applicant that it would have been useful for the Council to elaborate further on this matter in response to the Statement of Case but a number of site specific judgements need to be made and I do not find that the Council acted unreasonably.
10. The Council does not consider any other backland development in their consideration of the case despite reference being made in the Design and Access Statement and Statement of Case. Within the Officer report consideration is given generally to the character of the area and the reason for refusal focuses on the cramped nature of the site including the positioning of the house in relation to boundaries. The presence of other backland developments if they exist and are comparable is a case for the applicant and forms part of their case. The acceptance of other backland developments as presented have been considered as part of the assessment of the appeal. However, whilst the Council could have expanded on their concerns regarding the character of the area they did not act unreasonably by not specifically referencing backland development in their reports.

Conclusion

11. Overall, whilst I appreciate that the applicant does not agree with the Council's consideration and opinions relating to the effect of the appeal proposal, the issues at the heart of the appeal involve a degree of subjectivity. Given their conclusions and on the evidence before me, planning permission should not clearly have been granted and an appeal was therefore inevitable.

12. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified.

H Faulkner

INSPECTOR