



Costs Decision

Hearing held on 26 November 2024

Site visit made on 26 November 2024

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2024

Costs application in relation to Appeal Ref: APP/Y3940/W/24/3348926 Upper Farm, Wexcombe, SN8 3SQ

- 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 Sherbourne Wexcombe for an award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant planning permission for the demolition of the existing barn and the erection of a dwelling (Use Class C3) car port, repair of former chapel to create a home office, together with landscaping enhancements and associated works.
-

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 PPG advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking an award of costs on substantive grounds.
4. The applicant's case is made on the basis of the following PPG stated examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs: 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; failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. My appeal decision, which accompanies this costs decision, and should be read in conjunction with it, explains why I have allowed the appeal and the importance I have attached to the material consideration of the fallback position of the extant planning permission.

6. Whilst acknowledging that the extant permission constitutes a fallback position which is a material consideration, the Council's view is that it does not justify approval of the appeal scheme because it would provide greater benefits than the appeal proposal having regard to the environmental objectives of the Framework.
7. The weight to be attached to each of the schemes is a matter for the decision-maker, and my appeal decision explains why I have come to a different view to that of the Council. As such, I do not find that the Council has been unreasonable in respect of the approach taken in respect of the first refusal reason per se.
8. However, the second and third reasons for refusal demonstrate that the Council relies heavily upon the identification of harm arising from the appeal scheme to the character and appearance of the area, including the landscape character of the North Wessex Downs National Landscape (NWDNL), having regard to the siting, scale, building form and design of the proposal.
9. The applicant's costs application is largely based upon pre-application advice received from the Council in respect of the appeal proposal, a copy of which I have been provided with. Such pre-application advice is commonly provided by the Council based on the information provided by the applicant and against the adopted planning policies in place at that time.
10. The evidence before me is that the applicant's pre-application enquiry comprised a comprehensive set of documents, which, in addition to detailed plans of the scheme, including siting, elevations and site sections, also included a landscape and visual assessment, a heritage statement and a pre-application planning statement.
11. I note that the Council's advice was given on a 'without prejudice' basis, stating that subsequent planning application publicity and consultation, or new planning policies could bring new issues to light. However, notwithstanding this, the advice summary makes it clear that the Council's response identifies the issues that the Council considered needed to be addressed at that point in time.
12. These outstanding issues did not include matters related to the detailed scheme design and its siting within the appeal site and the impact upon the character and appearance of the area and the significance of nearby heritage assets. In these respects, the pre-application advice raised no specific objections nor made recommendations for changes and no objections were raised by the Council's Landscape and Conservation Officers.
13. It appears that the applicant proceeded with a planning application in good faith, seeking to address the outstanding matters raised in the pre-application advice. Notwithstanding this, the Council's second and third reasons for refusal in respect of design concerns and harm to the character and appearance of the area and landscape character of the NWDNL related to matters which were not highlighted previously by the Council.
14. Having regard to the extensive amount of information submitted by the applicant at pre-application stage and to the positive response from the Council in respect of the design of the scheme and its impact upon the character and appearance of the area, I find that the Council has acted unreasonably in

refusing the application for reasons not sufficiently highlighted at the pre-application stage and in then defending the appeal on the basis of the second and third reasons for refusal.

15. In coming to this conclusion, I have taken into account that the application was submitted within a few months of receiving the pre-application advice, whereby there is no evidence before me of any material change of circumstances such as the relevant planning policies for the determination of the application or a change in site conditions, that would warrant the Council taking a different approach in regard to design matters at the application stage. Moreover, it was dealt with under officers delegated powers, so did not involve a committee taking a different view.
16. The Council's Landscape and Conservation officers continued to raise no objection to the appeal scheme, and the Council, in determining the application and defending the appeal has provided no new/additional substantive evidence to justify taking a different view from its expert officers and to substantiate the second and third reasons for refusal.
17. Whilst the Council considers the magnitude effect on overall landscape character to be greater than that concluded by the applicant, it has not challenged any specific elements of the appellant's Landscape Assessment, and notably, has not provided evidence that it has undertaken its own Landscape Impact Assessment to underpin its assertions that the appeal scheme would be prominent within a wide range of views and more visually prominent than the extant scheme and that light emitted from the scheme would be unduly visible within the surrounding landscape.
18. Moreover, whilst previously advocating the submission of robust landscaping proposals to combat the visual impacts of the new dwelling, the Council has subsequently placed little weight upon this, expressing concern about over-reliance upon planting and an inability to ensure that it is capable of being maintained in the long term.
19. Having regard to the detailed design of the new building, the Council accepted a contemporary designed dwelling at pre-application stage and raised no objection to its scale, height, siting and detailed design. In refusing the application and defending the appeal, it has provided no cogent evidence to counteract that of the applicant and the Council's Landscape and Conservation Officers to justify its objection to the scheme on these grounds and its assertion that the dwelling design is urban and would be more appropriate to a suburban rather than a rural setting.
20. As such, I find that the Council failed to produce evidence to substantiate the second and third reasons for refusal and relied upon vague and generalised assertions about the proposal's impact upon the character and appearance of the area and the landscape character of the NWDNL which were unsupported by objective analysis.

Conclusion

21. I therefore find that, by refusing the planning application based on the second and third reasons for refusal, contrary to pre-application advice, and by subsequently not presenting full and detailed evidence to support its case at

appeal, it has relied upon reasons for refusal which do not stand up to scrutiny on the planning merits of the case.

22. This has comprised unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG. An award of costs, to cover the expense incurred by the applicant as a result of having to contest the Council's second and third reasons for refusal is therefore justified.

Costs Order

23. 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 Wiltshire Council shall pay to Sherbourne Wexcombe Ltd the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred as a result of contesting the Council's second and third reasons for refusal.
24. The applicant is now invited to submit to Wiltshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Leonard

INSPECTOR