
Costs Decision

Hearing held on 22 January 2025

Site visit made on 22 January 2025

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2025

Costs application in relation to Appeal Ref: APP/D3125/W/24/3349750

Land known as The Ashbed, Ladburn Lane, Shilton, Oxfordshire OX18 4AJ

- 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 John Colson for a partial award of costs against West Oxfordshire District Council.
 - The appeal was against the refusal of planning permission for the construction of three new detached dwellings and cart lodge style garages.
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Decision

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

The submissions for Mr John Colson

2. The costs application was submitted in writing. After the Council's oral response, the applicant made the following additional points orally at the hearing.
3. In summary the applicant maintained their position that:
 - the Council had introduced an additional reason for refusal during the appeal process relating to Self-build and Custom Housing (SBCH);
 - a singular appeal decision should not have such a substantial impact on the Council's weighting for SBCH schemes;
 - the use of the word 'woodland' in the reasons for refusal infers the importance the Council puts on the word's status, and costs were incurred in enlisting a specialist consultant on this matter; and
 - the Council had not made it clear that a bi-lateral agreement was not necessary even though discussions were ongoing about the legal agreement until 3 January 2025 when communication from the Council ceased. This left the appellant 'in limbo' as to how to move forward.

The response by West Oxfordshire District Council

4. The response was made orally at the hearing.
5. In summary the Council:
 - is unclear how its actions failed to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission.

- did concede that by changing its position in relation to whether the provision of SBCH could be considered a specific local need or not was tantamount to introducing an additional reason for refusal. The Council sought to justify this positional change by noting such concerns were brought to the applicant's attention by the Parish Council and interested parties during the planning application process. Therefore, it considered this would have needed to have been defended at appeal anyway.
- justified its change in how it weighted SBCH provision in the planning balance with reference to a recent appeal decision that was issued post the Council's determination on this case.
- further emphasised its position in terms of the use of 'woodland' in its reasons for refusal, referring the wooded nature of the appeal site as per the 1990 photographs submitted as part of the Council's appeal evidence¹ and its effect on character and appearance.
- was unclear what obligations the applicant was seeking which required a bi-lateral agreement. In the Council's view a unilateral undertaking (UU) has almost always been adequate for securing the first ownership of SBCH, so did not consider it held up the completion of an appropriate legal agreement.

Reasons

6. 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.
7. The costs application revolves around 4 counts of unreasonable behaviour. These relate to an introduction of an additional reason for refusal, a significant change in how SBCH was weighted in the planning balance; the use and interpretation of the term 'woodland'; and a delay in responding in relation to the legal agreement.
8. In light of the Council conceding that it changed its position in relation to SBCH and specific local need and therefore introduced an additional reason for refusal, I find it has behaved unreasonably. It is acknowledged that such matters were brought forward by the Parish Council and third parties during the application process, as such the appellant would have been aware of them. Nevertheless, the Council would also have been aware of this during the writing of its decision and so could have address it then.
9. Therefore, as this element of the Council's case was a main factor in the appeal procedures conversion from written representations to a Hearing, the appellant would have incurred unnecessary costs in relation to preparing and attending the Hearing over and above submitting the expected final comments.
10. Examining the weighting given to SBCH provision. It is acceptable for any main party to revise their position during the appeal process if evidence becomes known which was not available previously and would materially alter their case. In this instance the Council received an appeal decision which altered how it chose to consider the weighting of SBCH in the planning balance and accordingly submitted

¹ Appendix 1a of the Council's Statement of Case

this as part of its case. I am satisfied this change in position was duly justified by the Council and it is down to planning judgement as to which appeal decisions it considered more or less important.

11. As set out in my appeal decision I am satisfied that the Council's references to 'woodland' is in the context of character and appearance and have found that whether the appeal site's use would comply with any one specific definition of 'woodland' or not, would not alter the planning merits of the case.
12. Finally, it is disappointing that communication was not clearer from the Council in relation to what form the legal agreement should take. Nevertheless, it is plainly obvious that the appellant had considered the use of a UU adequate having submitted a draft at an early stage of the appeal process and agreed to it as an obligation within the Statement of Case. There is also nothing before me to warrant a delay in proceeding with a UU whilst still maintaining open channels of discussion with the Council about a potential bi-lateral agreement.
13. So, bringing the above together, I have found that the Council has behaved unreasonably on grounds relating to its change in position on SBCH and local need. Unnecessary expense has occurred in respect of having to prepare and attend a Hearing rather than continue with written representations. A partial award of costs is therefore warranted.

Costs Order

14. 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 West Oxfordshire District Council shall pay to Mr John Colson, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing for and attending the Hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to West Oxfordshire District 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.

RJ Redford

INSPECTOR