
Costs Decision

Site visit made on 21 January 2025

by **B Astley-Serougi BA(Hons) LLM MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

Spinney Cottage, Lower Lane, Rushton, Tarporley, Cheshire West and Chester CW6 9AN

Costs application in relation to Appeal Ref: APP/A0665/W/24/3351355

- 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 and Mrs Jerry Markham for a full award of costs against Cheshire West and Chester Council.
 - The appeal was against the refusal of planning permission for construction of one new dwelling within the grounds of Spinney Cottage.
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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.
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. The application is made on the basis that the Council took an unreasonable period of time to issue its decision, the unreasonable application of separation distances, the lack of response and decision to not forward information to the Tree Officer with regard to emails in relation to trees.
5. The timeliness of the determination of the Council's decision relates to behaviour during the planning application process. As such it is not within the scope of the costs regime and is a matter between the parties.
6. The applicant states that the planning officer performed a u-turn regarding the need for additional garden land for the appeal scheme. They consider this to have resulted in an unreasonable delay. However, the Council highlight that the issue remained that part of the garden for the appeal scheme is sited within the countryside. Therefore, the issue regarding the operational need for a countryside location remains and no unreasonable behaviour has occurred.
7. The application of the minimum separation distances outlined in the explanatory text of Policy DM2. Whilst the appellant considers that the distances are not mandatory, the policy does not distinguish between applying the policy or not, to

different types of residential development. This is a matter of planning judgement and therefore the Council have not behaved unreasonably regarding the application of the distances.

8. The Council have stated that after clarification was provided by the appellant which confirmed that the upstairs window on Spinney Cottage served a non-habitable window, this did not form part of a reason for refusal. Therefore, the Council did not act unreasonably by applying the minimum separation distances to other existing habitable windows.
9. In December 2022 the appellant was informed that the Council needed a tree survey. The appellant has stated they do not consider any significant trees to be impacted by the appeal scheme. They also emailed the Council in July 2023 with, amongst other things, the details of the trees that would be replaced. It will be seen from my decision that I agree with the Council that insufficient information has been provided to demonstrate the proposed development would not result in harm to trees within and near to the site.
10. The choice of the Council to not consult its Tree Officer is not within the scope of the costs regime given that this is behaviour during the planning application process. Nevertheless, the Council is an independent decision maker. Beyond statutory requirements, who the Council consult is up to them as long as it can substantiate its position.

Conclusion

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

B Astley-Serougi

INSPECTOR