



Costs Decision

Site visit made on 7 July 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2020

Costs application in relation to Appeal Ref: APP/C3430/W/20/3244275 The Meadows, Middle Lane, Oaken, Wolverhampton WV8 2BE

- 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 McAuliffe for a full award of costs against South Staffordshire Council.
 - The appeal was against the refusal of planning permission for the demolition of existing dwelling and construction of replacement dwelling.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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 also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The Applicant submits that a full award of costs is justified as the Council has failed to properly exercise its development management responsibilities, by relying on reasons for refusal that it has failed to justify and which do not stand up to scrutiny. In addition, the Council has delayed a development which should clearly have been permitted having regard to the very special circumstances including inaccurate assertions and failing to evaluate the correct very special circumstances.
5. Furthermore, the Council have made suggested conditions that are not necessary or reasonable and do not comply with the guidance in the National Planning Policy Framework. It has also failed to provide adequate guidance as to what amendments would be acceptable to avoid an appeal.
6. The Council have responded that there was a debate at Committee by Members about the merits of the Very Special Circumstances which had been put

forward by the Applicant and which were assessed by the case officer in her Committee report. It is the democratic right of Councillors on the Planning Committee to query the views of the officer expressed in their report and the Committee is not obliged to accept the officers' recommendation. In this instance, the Committee did not agree with the weight the officer had attached to the Very Special Circumstances put forward by the Applicant. The Committee did not consider that they clearly outweighed the harm to the Green Belt, by reason of inappropriateness. It was therefore not unreasonable for the Committee to refuse the application for this reason.

7. In respect of the suggested conditions, it is submitted that these are similar to that in the original case officers report and that the Council were not aware of any objections to these when the committee report was drafted. Additionally, it is not considered that the suggested conditions have caused the Applicant to incur unnecessary or wasted expense in the appeal process. Furthermore, it is the Councils view that if the appeal is allowed it is up to the Inspector to determine which conditions are appropriate.
8. The Council also consider it would have been difficult for officers to provide guidance as to what amendments would be acceptable to avoid an appeal beyond suggesting that the size of the proposed replacement dwelling was significantly reduced, to comply with the Council's adopted Green Belt and Open Countryside SPD, referred to in the case officers original report.
9. It is clear to me that both parties acknowledge that a Planning Committee decision which goes against officer advice is not a reason to give an award of costs as the Committee were entitled to come to their own conclusions on the merits of the proposal. However, the key issue is whether the Council have provided sufficient evidence to substantiate their reasons for refusal at appeal.
10. As I have noted in my appeal decision, it is common ground between the main parties that the proposal would be inappropriate development in the Green Belt and as such the crux of the Applicants case was whether the fallback position provided the very special circumstances necessary to justify the granting of planning permission.
11. The assessment of such circumstances is without a doubt a matter of planning judgement based upon the merits of the other considerations which could provide such a justification. Therefore, I cannot agree with the Applicants assertion that the appeal proposal should have clearly been permitted.
12. To my mind, the Councils appeal statement has provided a sufficient justification to support the Committee's decision to refuse planning permission with an assessment being made in respect to the level of harm to openness being part of the weighing up of the fallback position.
13. In coming to the above view, I acknowledge the differences between the main parties in respect of the size of the existing dwelling, the existing plus fallback position development, and the appeal proposal. Whilst this may have caused some confusion whether the proposal represented a 100% increase or over a 110% increase in the floorspace, what is clear is that the proposal was undoubtably significantly larger than the existing dwelling.
14. In my decision, I found that there were not very special circumstances which justified the granting of planning permission and in that respect the Councils

decision was well founded. I am also satisfied that the Council have provided sufficient evidence to substantiate its reasons for refusal at appeal. As such I consider that no unreasonable behaviour occurred.

15. Turning to the other aspects of the application for costs, I accept that it would be very difficult for officers to advise what may be acceptable given the circumstances. However, it would not be impossible to seek such advice from the members of the Planning Committee.
16. That said, whilst an indication what may have been acceptable to the Council as a whole would have been beneficial, I consider that this on its own does not constitute unreasonable behaviour. Furthermore, what might be acceptable for a future proposal is not particularly relevant to the merits of the proposal before me.
17. Finally, in respect of the suggested planning conditions, three of the four conditions queried by the Applicant in the final comments are the same as those published in the committee report, whilst the fourth condition is largely a combination of more than one of the committee report conditions.
18. Draft condition 8 seeks to restrict demolition and re-development works to between October and March which is similar to that set out within the mitigation measures at paragraph 5.2 of the absolute ecology activity survey for bats document dated September 2019. Whilst it would appear unnecessary for construction works to be restricted in this manner, I cannot agree that the demolition aspect is unreasonable. Similarly, it is clear to me that draft condition 13 serves a valuable planning purpose, albeit that the stated reason for that condition is somewhat incorrect. Despite these minor issues with those conditions, I find that the Councils stance on these is not unreasonable.
19. However, in respect of conditions 11 and 12 I find that neither of these conditions are necessary to make the development acceptable in planning terms. This is particularly the case in respect of draft condition 12 as given the size and layout of the driveway there is no prospect of any highway safety or parking space issue should the garage not be used for the parking of motor vehicles. Furthermore, the conversion of the garage would require planning permission should the appeal have been allowed anyway as condition 13 would restrict such a conversion.
20. The Councils reason for condition 12 relates to the protection of trees during construction works, whereas the condition itself relates to a period of 10 years following the completion of the development. Whilst I understand the desire of the Council to protect the character and appearance of the area, I find such a condition to be excessive and unnecessary.
21. In summary, I therefore find that the Council has acted unreasonably in suggesting draft conditions 11 and 12.
22. Whilst I am not clear why the appellant didn't raise any objection to these conditions as part of the original appeal statement (these conditions are unchanged from the officers report to committee), it is clear that there has been what can be considered to be a small amount of unnecessary time in dealing with these as part of the applicants final comments submission. This is therefore resulted in the Applicant incurring unnecessary expense in commenting on these two conditions.

Conclusion

23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to dealing with draft conditions 11 and 12 only and therefore a partial award of costs is justified.

Costs Order

24. 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 South Staffordshire Council shall pay to Mr & Mrs McAuliffe the costs of the appeal proceedings described in the heading of this decision; limited to those costs incurred in contesting the draft conditions 11 and 12 from the Councils list of suggested conditions, such costs to be assessed in the Senior Courts Costs Office if not agreed.
25. The applicant is now invited to submit to the South Staffordshire 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.

Chris Forrett

INSPECTOR