
Costs Decision

Site visit made on 6 May 2014

by Jane Miles BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 May 2014

Costs application in relation to Appeal Ref: APP/Y3940/A/14/2212664 12A Westbury Road, Warminster, Wiltshire BA12 0AN

- 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 R Denton for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of the Council to grant planning permission for two detached houses on land to rear of 12A Westbury Road.
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Decision

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

Preliminary Matter

2. Since the application for costs was first made, *Circular 03/2009*¹ has been superseded by the *Planning Practice Guidance* (PPG). Examples of the types of behaviour which may give rise to a substantive award against a local planning authority are listed in the PPG. As is apparent from the appellant's final written comments on this matter, key points on which the initial application relies appear in both the *Circular* and the PPG. Therefore, even though the Council's response refers to the *Circular* rather than the PPG, I am satisfied that its interests will not be prejudiced by my judging the application against the PPG.

Reasons

3. As set out in the PPG, costs may be awarded against a party who has behaved unreasonably, thereby directly causing another party to incur unnecessary or wasted expense in the appeal process.
4. It is particularly significant that the current appeal scheme follows a relatively recent appeal decision² on a previous scheme. The Inspector in 2013 concluded that scheme would not harm the area's character and appearance, and referred to it as being of 'good design and materials'. PPG paragraph 049 includes advice that 'persisting in objections to a scheme, or part of scheme, which has already been granted planning permission or which the Secretary of State or an Inspector has previously indicated to be acceptable' (my emphasis) is a ground for an award of costs against a local planning authority.

¹ Costs Awards in Appeals and Other Planning Proceedings

² Appeal ref: APP/Y3940/A/12/2188932, decision dated 7 August 2013

5. The current appeal scheme follows the same design concept as the one already found to be acceptable by the 2013 Inspector, using the same palette of materials, but with revisions to the siting, scale and form of the proposed house on Plot 1³. Members are entitled not to accept their officers' recommendations, and character and appearance issues often involve matters of judgement, but any refusal must be properly substantiated. The Members' familiarity with the area and local opposition to the proposal do not however amount to an objective analysis, or realistic and specific evidence, sufficient to demonstrate why the revisions to the scheme justify reaching different conclusions from those of the previous Inspector in relation to matters of visual impact, character and appearance.
6. Moreover, as the appellant has highlighted, the Committee Minutes do not refer at all to character and appearance as a reason for refusal, and no explanation for this has been given by the Council. In the light of the above matters, I find that the Council's refusal reason relating to character and appearance has not been adequately substantiated and is, therefore, unreasonable.
7. The second refusal reason relates to living conditions at no. 12C which, again, is a matter involving judgement. It is relevant that the house at no. 12C is now complete, facilitating a more informed judgement about the likely impact of the revised Plot 1 house on this property. The neighbour's concerns are understandable but, nonetheless, the relationship between the two houses would be well within the bounds of what is normally considered acceptable in residential layouts. Indeed, given the width of the gap between them and the low height of the proposed house as a result of the flat roof design, any impact would be less than would be the case if a 'conventional' pitched roof had been proposed.
8. The Council's response to the costs application mentions the Members' assessment of 'the situation on the ground' but I have not found any explicit reference to them having undertaken a site visit, which is important for a good understanding of the siting, heights and length of the Plot 1 house relative to no. 12C. As the Committee Minutes record nothing more than that 'a discussion was held regarding the impact on neighbour amenity', I cannot tell to what extent it was based on objective analysis. Little more of substance is put forward in the Council's appeal statement by way of realistic and substantive evidence. Thus, in relation to this refusal reason also, I find the Council has not adequately justified its case.
9. Overall therefore, I conclude the Council's refusal has not been adequately substantiated and is therefore unreasonable, which amounts to unreasonable behaviour as described in the PPG. Thus I conclude that unreasonable behaviour resulting in unnecessary expense in the appeal process has been demonstrated and that a full award of costs is justified.

Costs Order

10. 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

³ The revisions seek to address the previous Inspector's concerns about living conditions at the adjacent property, now no. 12C

Wiltshire Council shall pay to Mr R Denton, the costs of the appeal proceedings described in the heading of this decision.

11. 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.

Jane Miles

INSPECTOR