



Costs Decision

Site visit made on 31 January 2011

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

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

Decision date: 14 February 2011

Costs application in relation to Appeal Ref: APP/R3325/A/10/2140862 47 Birch Road, Martock, Somerset, TA12 6DR

- 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 S Chapman for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of the Council to grant planning permission for the erection of 1 dwelling including the demolition of existing garage.
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Decision

1. I refuse the application for an award of costs.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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 appellant has indicated that he tried to avoid having to take this matter to appeal by engaging the Council in discussions prior to submitting the appeal, with a view to submitting a revised application. He was advised, however, that a resubmission would be unlikely to be approved and that the Council considered there was clearly an argument to be had on the merits of the application at appeal.
4. The main thrust of the appellant's claim for costs is that the Council has acted unreasonably by preventing or delaying development which should clearly be permitted. It is argued that the Council has failed to take proper account of the development plan and relevant material considerations including the Officer's Committee Report and evidence submitted with the application. The appellant further argues that the Council has not produced evidence to show clearly why the development cannot be permitted, and that its reasons for refusal are not complete, precise, specific and relevant to the application as required by paragraph B16 of the above Circular.
5. However, although the Council refused planning permission contrary to the recommendation of its Officers the reasons given do, in my opinion, set out clearly what the Council's concerns were. With regard to the first reason for refusal it is apparent that the Committee's view was that the proposed dwelling would amount to an overdevelopment of the site and that its detached nature would set it apart from the form and character of the area. I see no reason to doubt that this view was reached in an informed manner, as evidence in the

Council's appeal statement explains that it is normal for members of the Committee to visit application sites prior to making their decisions.

Furthermore, the Committee minutes in this case indicate that the decision to refuse was based both on an assessment of photographs of the area presented by the Planning Officer and in the light of visits to the area by Councillors.

6. In my consideration of this proposal I have commented on the fact that the appeal site is not overly spacious, and have also highlighted the fact that the detached dwelling proposed would introduce a different building type into this cul-de-sac. Nevertheless, for the reasons given in my decision I have taken a different view to the Council and have concluded that no significant harm would arise from these aspects of the proposal. But the fact that this is a subjective assessment means, in my opinion, that the Council was quite entitled to form the view it did, based on Members' assessment of the proposal. It therefore did not act unreasonably in deciding to refuse the application on these grounds.
7. Insofar as the second reason for refusal is concerned, again I consider it to be acceptably precise in conveying the Council's concerns regarding the potential for conflict between pedestrians and vehicles. Moreover, it seems to me that the Committee's decision on this matter was reached with the benefit of site observations on a number of occasions, supported by the views of residents who live in the locality of the appeal site. Although I have, again, come to a different view to the Council on this matter, for the reasons set out in my decision, I do not consider the Council acted unreasonably, in the terms of the Circular, when it decided that this aspect of the proposal was not acceptable.
8. Taking all the above points into account I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009 has not been demonstrated. The application is therefore refused.

David Wildsmith

INSPECTOR