



Costs Decision

Site visit made on 1 March 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday 23 March 2022

Costs application in relation to Appeal Ref: APP/L3245/W/21/3285091 Wingthorpe, Mount Drive, Oswestry SY11 1BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990.
 - The appeal is made by Colin and Jenny Boswell for a full award of costs against Shropshire Council.
 - The application Ref 20/04216/FUL, dated 13 October 2020, was refused by notice dated 19 April 2021.
 - The appeal was against a refusal to grant planning permission for the proposed development described as 'the erection of 1No detached bungalow following the demolition of existing outbuilding adjacent to Wingthorpe, Mount Drive, Oswestry, Shropshire, SY11 1BQ.'
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance 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. The applicant alleges that the Council acted unreasonably by failing to take account of 1) the fundamental differences between the appeal proposal and the earlier 2015 proposal, 2) the change to site conditions (e.g. the increase in height of the hedge), and 3) its own pre-application advice.
4. In respect of the fundamental differences between the appeal proposal and the earlier 2015 proposal, the Council, as decision maker, exercised their planning judgement by considering whether to grant planning permission or not on the more recent proposal. They took advice from their Historic Conservation team as the neighbouring properties to the appeal site are non-designated heritage assets and the site is within the setting of Conservation Areas. These are matters to be taken into account by the decision maker when deciding whether the proposal would be acceptable when in such close proximity to heritage assets. I consider that the Council set out their reasoning for refusal in the decision notice and the officer's report. I therefore find the Council to have acted reasonably in exercising their planning judgement when determining the application.
5. In respect of the change to site conditions, with particular regard to the height of the hedge, the Council have set out in their reasoning that it would be difficult to rely on a hedge as a screen between the two garden boundaries. This is because a hedge is a living organism that could die or be reduced in

height in the future by cutting back or being removed completely. From my site observations, I noticed that the hedge had been left to grow on the Wingthorpe side. The evidence submitted suggests that the hedge had previously been maintained at a lower level, which was evident when I visited the neighbour's side at Hafod Wynne. Nevertheless, as the proposal would be higher than the hedge, it would still be seen above it. As the ground is at a lower level on the Hafod Wynne side, the proposal would have an overbearing impact on the neighbour's amenity area directly below.

6. With regard to the Council's pre-application advice, the applicant did not submit any new plans to the Council at pre-application stage and the advice given was based on a single-storey 2-bedroom bungalow. The proposal that was later submitted to the Council for application ref 20/04216/FUL was for a 3-bedroom dormer bungalow with a first floor in the roof space. In the absence of this information at pre-application stage, I find the Council to have acted reasonably in exercising their planning judgement when determining the application.
7. Consequently, I consider that the Council provided clear and justified reasons for refusal. They exercised their planning judgement as decision maker and were entitled to come to the conclusions they did based on the adopted development plan for the area. Therefore, I find the Council to have acted reasonably in this instance.
8. In my judgement, in respect of the reason for refusal, the Council gave reasons as to why it was concerned that the proposal, by virtue of an overbearing impact and a loss of outlook caused by the proposal, would be contrary to development plan policy in regard to adverse impacts on human health and wellbeing, and would be harmful to the living conditions of the neighbouring occupants. The above matters involve a degree of judgement and, as I have set out in my other decision, I agree. Although I did not agree with the Council's decision in terms of loss of privacy, or design and context, sufficiently robust evidence was submitted to show that the Council did not apply its judgement in an unreasonable manner, in accordance with the advice in the Guidance.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is not therefore justified.

Helen Smith

INSPECTOR