

Costs Decision

Site visit made on 27 September 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 17 October 2016

Costs application in relation to Appeal Ref: APP/K0235/W/16/3154325 24 Bedford Road, Wilstead, Bedford, Bedfordshire MK45 3HW

- 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 Drummond for a full award of costs against Bedford Borough Council.
 - The appeal was against the grant subject to conditions of planning permission for extensions and alterations to garage.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. It goes on to say that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. These circumstances include imposing a condition that is not necessary and thus does not comply with the guidance in the National Planning Policy Framework (the Framework) and making vague or generalised assertions about a proposal's impact, which are unsupported by any objective analysis.
 4. The applicant's case is essentially that as the creation of a separate unit of accommodation in the garage would require a further, separate planning permission that the proposed condition was not necessary and therefore did not meet the framework 'tests', that insufficient evidence was provided to justify the attachment of the condition and that the policies cited in support of the condition were not relevant.
 5. The Council's officer report considered the application on the basis that it would be an ancillary or incidental use to the main dwelling but addressed the Parish Council's concern that the extended building could be used as primary residential accommodation by the imposition of the condition. However, the ambiguity around the phrase "...separate unit of accommodation" used in the condition which I mention in my appeal decision does not necessarily limit the effect of the condition to a change which would require planning permission.
 6. Whilst some of the assertions about the effect of an annexe the Council made in their statement were generalised they did include specific detail about their
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concerns over the harm which could arise if windows were subsequently inserted into the garage. I agree with the Council insofar as the harm which could occur although not that the condition attached was appropriate to address such concerns.

7. However, a more precise condition would have addressed the Council's concerns. Had the Council attached a condition which was more specific and proportionate in addressing their concerns, the applicant may have been less likely to have made an appeal. Nevertheless, it is clear that without the unnecessary condition it is unlikely that an appeal, and the expense incurred to make it, would have ensued.
8. Notwithstanding that the Council provided a justification for the attachment of the condition and the reason included a relevant policy reference, I find that the Council acted unreasonably in attaching a condition which was not necessary and that as a consequence the appellant incurred unnecessary expense in the appeal process.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, 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 Bedford Borough Council shall pay to Mr Drummond, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Bedford Borough 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.

Geoff Underwood

INSPECTOR