



Costs Decision

Site visit made on 12 June 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 20th June 2017

Costs application in relation to Appeal Ref: APP/J1915/W/17/3168262 The Annexe, The Lodge, Dene Lane, Aston, Hertfordshire SG2 7EP

- 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 and Mrs Burton for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for the conversion of existing annexe and double garage to form an independent residential dwelling unit including a single storey link extension and alterations to form new openings.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. Paragraph 049 of the PPG¹ states 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. This includes unreasonably refusing a planning application or the prevention or delaying of development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The issue in dispute in this instance was whether the proposed extension amounted to inappropriate development in the Green Belt. The Council considered it would be inappropriate development because the existing dwelling (The Lodge) has already been the subject of notable extensions. As a consequence any further extensions to the dwelling, inclusive of any outbuildings, would be disproportionate and thus contrary to Policy GBC1 of the East Hertfordshire District Local Plan Second Review 2007 (LP) as it would be inappropriate development which is, by definition, harmful to the Green Belt.
5. Conversely, the applicants consider the starting point for the assessment of whether the proposed extension would be disproportionate or not is the existing buildings – the annex and garage – which have not been extended. Given the

¹ Reference ID: 16-049-20140306

modest size of the proposed extension the applicants opine that the proposed extension could not be a disproportionate addition to these buildings.

6. The applicants' interpretation, which I share, is rooted in the National Planning Policy Framework. Paragraph 89 of the Framework states that an extension or alteration of a building is not inappropriate development in the Green Belt provided it would not result in a disproportionate addition to the original building. Alternatively, the Council's interpretation flows from Policy GBC1, which was based on the now superseded Planning Policy Guidance Note 2 – Green Belts (PPG2), which states that an extension of a dwelling would not be inappropriate development, provided it would not result in a disproportionate addition to the original building.
7. The Framework has not precisely carried over the wording from PPG2. The substitution of the word *dwelling* for *building* when given its proper meaning has resulted in a material change whereby a building in the Green Belt could be extended and this would not amount to inappropriate development if the extension was a proportionate addition to that building. Policy GBC1 is therefore partially inconsistent with the Framework. The Council did not consider the consistency of Policy GBC1 and the Framework, which is a requirement of Paragraph 215 of the Framework. This is a significant omission by the Council.
8. The Council recognised the revised wording in the Framework in Paragraph 2.2 of its statement. However, it then substituted *building* for *dwelling* in Paragraph 2.3 of the same document. The substitution of one word for another goes beyond what can be considered a reasonable interpretation of policy. The conflation of the two terms has resulted in the Council misapplying Green Belt policy. This is because the starting point for a consideration of whether the appeal scheme would be a disproportionate addition is the buildings that would be extended and not The Lodge, which is a separate building. This is a substantive failing that directly led to the application being unreasonably refused. The applicants therefore expelled unnecessary expense submitting the appeal. The Council's decision was therefore unreasonable in the context of Paragraph 049 of the PPG.

Conclusion

9. My overall conclusion is that in this instance the Council acted unreasonably in refusing the appeal scheme for the reason it did. 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 East Hertfordshire District Council shall pay to Mr and Mrs Burton, 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. The applicants are now invited to submit to East Hertfordshire District 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.

Graham Chamberlain
INSPECTOR