
Costs Decision

Site visit made on 19 October 2017

by D Guiver LLB(Hons) Solicitor

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

Decision date: 6 November 2017

Costs application in relation to Appeal Ref: APP/Z4718/W/17/3181496 1 Wheat Close, Holmbridge, Holmfirth HD9 2QL

- 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 D Trueman for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for conversion of outbuilding to form holiday accommodation.
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Decision

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

Reasons

2. The applicant submits that the Council has acted unreasonably in that it refused planning permission for conversion of an existing outbuilding to holiday accommodation without good reason.
3. The decision to refuse planning permission was made on 27 June 2017 and, in summary, gave as the reason for refusal that the change of use to holiday accommodation would not fall within any of the exceptions to the presumption against development in, and by definition would be harmful to, the Green Belt. The relevant exceptions are found in paragraph 90 of the National Planning Policy Framework (the Framework) which provides a 'closed list' of exceptions¹.
4. The decision notice further stated the proposed alterations to the building would cause harm to the openness of the Green Belt and the character and appearance of Wheat Close.
5. The officer's report recommended approval and confirmed officer opinion that the proposal amounted to a re-use of the building and that the scheme would reduce the impact on openness.
6. The committee's decision went against the planning officer's advice and the committee minutes record the decision in the following terms:

'Contrary to the Officer's recommendation, the Committee considered the development would be inappropriate in the Green Belt and did not demonstrate very special circumstances that would clearly outweigh the harm to the Green Belt. In addition the development was out of character

¹ Fordent Holdings Limited v. SSCLG and Cheshire West and Cheshire Council [2013] EWHC 2844 (Admin)

to the surrounding area and would have a detrimental impact on the visual amenity of the neighbouring properties.'

7. The exceptions in paragraph 90 of the Framework are, to a large degree, matters of fact and any planning balance on the application of the exceptions is limited to the questions of openness and the purposes of Green Belt policy. Of course a determination either way on inappropriate development does not preclude a local planning authority from taking other matters into account, such as character and appearance.
8. It is not unreasonable per se for members to determine that the planning balance supports a decision that is contrary to officer advice. However, in this matter the Council provides no basis for the determination that the proposal was inappropriate development, upon which its decision hinged.
9. The reference to material change of use first appears in the Council's decision notice, which also stated that the proposal 'would cause harm to the openness of the Green Belt, appearing incongruous in the context of the symmetrical and isolated terrace row of Wheat Close when seen from Brownhill Lane to the south.'
10. There is no reference in the evidence before me that the committee addressed the Green Belt policy considerations or the question of openness. There is also no evidence before me that the committee reached its decision on the basis of a material change of use not falling within the exception of a re-use of a building. It can be seen in my decision on the substantive appeal that I concluded that re-use of a building can include a change of use.
11. The minute of the committee's decision also refers to the proposal's potential impact on the living conditions of the occupiers of the neighbouring properties in terms of outlook, but the decision notice makes no mention of this. The decision notice is, therefore, at best an incomplete presentation of the committee's reasons for refusal, and introduces matters not referred to elsewhere.
12. The applicant made an earlier application for planning permission for a similar scheme and on 30 June 2016 the planning committee resolved to approve the application as that proposal was deemed not to be inappropriate development or harmful to the character and appearance of the area.
13. However, shortly afterwards a local resident and ward councillors complained that relevant information had been omitted from the officer's report so the application was referred back to the committee on 27th October 2016.
14. The committee reconsidered the application taking into account further information about the enforcement history of the site and a more detailed account of representations. The relevance of the enforcement history to reconsideration has not been explained. The Council's own records show that despite numerous assertions that the building subject to the application had no planning permission, it was lawfully constructed under permitted development rights.
15. However, at that committee meeting an extract from a Land Registry document was produced indicating that an incorrect certificate of ownership had been submitted with the application. When this was confirmed the original

application was declared invalid, and the Council asserts that the original decision was also nullified.

16. Notwithstanding the validity or otherwise of the first application, the applicant had a legitimate expectation that the later, similar application would be decided on a consistent basis.
17. I consider that the Council's inconsistent decision on similar facts for the same property, together with determination of factual matters on a wholly inconsistent basis, and the failure of the decision notice to accurately record the decision of the committee constitutes unreasonable behaviour.
18. The Planning Practice Guidance (PPG) 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. The PPG makes it clear that a local planning authority is at risk of an award of costs if it behaves unreasonably with respect to the substance of the matter under appeal by not determining similar cases in a consistent manner and by inaccurate assertions about a proposal's impact, which are not supported by any objective analysis.
19. The Council's inconsistency in reaching opposing decisions on the similar facts and the failure to accurately represent the committee's decision has caused the appellant to incur the unnecessary costs of lodging and pursuing an appeal.
20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

21. 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 Kirklees Metropolitan Borough Council shall pay to Mr D Trueman, 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.
22. The applicant is now invited to submit to Kirklees Metropolitan 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.

D Guiver

INSPECTOR