
Costs Decision

Site visit made on 22 July 2019

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2019

Costs application in relation to Appeal Ref: APP/G2713/W/18/3215395 The Grange Mews, Grange Track, Great Ayton TS9 6PY

- 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 Lee Freer for a full award of costs against Hambleton District Council.
 - The appeal was against the refusal of planning permission for change of use from annex to dwelling class C3.
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Decision

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

Reasons

2. Paragraph 030 of 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.
3. The appellant states that the Council have acted unreasonably as it took some 32 weeks to determine the application; additional reasons for refusal were introduced during the appeal process; and they have defended the appeal contrary to well established Case Law.
4. I accept that the delay in determining the planning application would be frustrating for the appellant however, it appears that a number of documents were submitted to the Council throughout the process of the application which would have required time to be considered by Officers. The Council have indicated that there were delays with arranging site meetings with the appellant. There also does not appear to be any delay within the appeal process. Whilst the delay in the decision making is lengthy, this would not have prevented the submission of an appeal and I do not consider that the Council have acted unreasonably to an extent which justifies costs on this part.
5. The appellant claims that additional reason for refusals were introduced in the Councils statement of case, specifically in paragraph 4.5 of the statement of case and suggested condition 3 relating to access. Paragraph 4.5 of the Councils statement of case elaborates on some of the criterion of Policy CP4 of the Hambleton District Council Development Plan Document 2008 which is included in the reasons for refusal. The Council do not implicitly state that another reason for refusal is being introduced in paragraph 4.5. The suggested

condition 3 relating to the access is to improve visibility. Comments from the Highways Officer on the planning application had indicated that a condition to clear low lying vegetation would improve visibility in the interests of highway safety. Additional reasons for refusal were not introduced at the appeal stage and the Council have not acted unreasonably in this instance.

6. It is claimed that the Council have acted unreasonably by defending the appeal contrary to well established Case Law. This is with particular reference to the term 'isolated' and its association with paragraph 79 (previously paragraph 55) of the National Planning Policy Framework (the Framework) and also the definition of previously developed land.
7. Whilst the Council state in the Officers Report that the site is considered not to be previously developed land and also isolated in relation to the Framework, they also conclude on matters of poor access to services and facilities being contrary to development plan policies. I therefore do not consider that the Council's interpretation on previously developed land and isolated in relation to the Framework would have prevented the submission of an appeal.
8. However, following the submission of the appeal and the reference to the Braintree Judgements¹ and the Dartford Judgement² in the appellants statement of case, the Council continue to argue that the appeal property is isolated and is not previously developed land. The Braintree decisions make it clear that the term isolated should be given its ordinary objective, meaning far away from other buildings. The appeal site is directly adjacent a number of buildings and therefore cannot be isolated. The Dartford Judgement provides clarity on the definition of previously developed land as stated in the Framework. In this instance, the exclusions referred to in the definition of previously developed land in the Framework states "land in built up areas such as residential gardens". The appeal site is not within a built-up area and the Dartford Judgement clarifies that *"as a matter of ordinary English I cannot see that any other meaning can be given to this sentence. 'Land in built-up areas' cannot mean land not in built-up areas"*.
9. The Council have therefore acted unreasonably by acting contrary to well established law which had led to extra expense for the appellant for work that would not otherwise have arisen.
10. I therefore conclude that a partial award of costs, to cover the expense incurred by the appellant in contesting the Council's statement of case reference to the terms 'isolated' and 'previously-developed', is justified.

Costs Order

11. 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 Hambleton District Council shall pay to Mr Lee Freer the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Councils statement of case, which concerned alleged conflict with paragraph 79 of the Framework and the definition of previously developed land in the Framework.

¹ Braintree District Council v SSCLG & Ors [2017] EWHC 2743 (Admin) and Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610.

² Dartford Borough Council v SSCLG & Ors [2017] EWCA Civ 141.

12. The applicant is now invited to submit to the 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.

Chris Baxter

INSPECTOR