
Costs Decision

Site visit made on 6 November 2019

by Neil Smith BA Hons BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2019

Costs application in relation to Appeal Ref: APP/T2215/W/19/3234878 31B Willow Court, Devon Road, Sutton At Hone DA4 9AA

- 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 M Ayton for a full award of costs against Dartford Borough Council.
 - The appeal was against the refusal of planning permission for the conversion of light industrial workshop to a 2-bed dwellinghouse.
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Decision

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

Reasons

2. Paragraph 30 of the National Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant submits that the Council has acted unreasonably for several reasons.
4. Firstly, that there was insufficient justification for the application to be treated as a full planning application as the building has the benefit of an extant permission issued in 1992¹. I concur with the Council that the proposed external alterations to the building are material, would require planning permission in their own right and that it would not have been appropriate to treat them as minor amendments to a previous permission. I am aware that the applicant supplied evidence to the Council to demonstrate the industrial use of the building however, I have not had sight of this evidence.
5. Secondly, that the Council has been unreasonable by not acknowledging that the partially constructed building is of the same height and bulk as that granted planning permission in 1992. It is clear from the evidence that the constructed building differs from both the 1992 permission and that granted in 2016². I am mindful that the applicant submitted some photographic evidence to support this point. However, I find that this evidence, in isolation, was insufficient to demonstrate that the ridge and eaves height mirrored that of the 1992

¹ DA/91/0659

² DA/16/00850/FUL

permission, particularly given there are design differences between the partially constructed building and the approved plans.

6. Thirdly, that the Council acted unreasonably by seeking to defend its reasons for refusal despite the fact that the application complied with the Council's policies and was recommended for approval. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable. In this case, the effect of the proposal in relation to the character and appearance is a matter of planning judgement. Whilst I have reached a different conclusion to the Council on this matter, the appeal statement and the decision notice have clearly demonstrated why the proposal was considered to have a harmful effect.
7. In terms of the second reason for refusal as the Council have highlighted, the reason for refusal refers to 'perceived overlooking' rather than overlooking. On this issue the proposed front dormer window is shown in a different location to the 2016 permission. From the evidence I have before me the Council has clearly set out why it is considered that the relocation of the dormer window results in a different and harmful impact.
8. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore an appeal could not have been avoided. The Council had reasonable concerns about the impact of the proposed development which justified its decision.
9. Fourthly, that the changes made to the description of the development were not justified and resulted in unnecessary delay to the application. Whilst I accept that the delay would have caused the appellant some concern, I find nothing to suggest that a decision was not reached on the merits of the proposal, as submitted. I also find no substantive evidence that the appellant incurred any additional expense as a result of that delay. Therefore, the Council's request to change the description of development was not unreasonable, particularly as the building differed to that previously consented. I am also mindful that the appellant agreed to the change via email dated 1 April 2019.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Neil Smith

INSPECTOR