



Costs Decision

Site visit made on 3 December 2019

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 09 January 2020

Costs application in relation to Appeal Ref: APP/K0235/D/19/3238161 Middlepits Cottage, Bedford Road, Turvey, Bedford, Bedfordshire MK43 8BB

- 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 Rob Jones for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of planning permission for the conversion and extension of garages to residential annexe.
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Decision

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

Reasons

1. The National 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.
2. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. The Applicant sets out that the Council failed to consider the development proposal put before them (an annexe) but rather treated the proposal as a separate independent dwelling. Furthermore, the Council failed to properly consider whether the imposition of a planning condition would be appropriate to make the development acceptable.
4. The Council have responded that the dictionary definition of an annexe is a building joined to or associated with a main building, providing additional space or accommodation. It is also suggested that typically annexes are used by dependant relatives and therefore there is a reliance on the main dwelling for certain functions e.g. providing meals, washing clothes etc. The proposed annexe in this case is considerable in size and completely self-contained therefore it cannot be reasonably assumed that it will have a reliance on the main dwelling for any function.

5. Reference is also made to the 'Permitted development for householders – Technical Guidance' which clarifies that a purpose incidental to a dwelling house would not cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
6. In terms of planning conditions, the Council have indicated that they took the view that a condition requiring the building to be occupied as an annexe only would be unreasonable as the description specifies the use as an annexe. There is also an enforceability concern as it would not be obvious that the building was being occupied as a separate dwelling at any time.
7. In my view, the appeal decision turned on whether the proposal could be properly considered to be an annexe or whether it would be a separate dwelling. Given that the converted and extended buildings would provide all of the internal facilities of an independent dwelling, the determinative factor was whether the annexe would be actually occupied as a single household with the occupants of the host dwelling.
8. In this case, I noted that the annexe was intended to be occupied by the Applicants son and that there would be an element of shared meals and washing. Indeed, these are two factors which the Council have made specific reference to in their response to this costs application. Whilst the Council have also referred to the guidance relating to permitted development, I find that this is not a definitive guide as to whether the occupation of an annexe would be part of a single household or not.
9. To my mind, it is clearly a matter of planning judgement as to whether the annexe would be used as accommodation associated with the host dwelling as opposed to an independent dwelling.
10. Whilst I have found in favour of the applicant in my appeal decision, the Council had clearly given consideration to whether the proposal was an annexe. In this respect, I consider that the judgement made was not unreasonable given the size of the annexe itself and its detached nature.
11. That said, the Councils consideration of whether a planning condition would address their concerns is somewhat incorrect. To suggest that a condition is unnecessary as the description describes the proposal as an annexe is plainly wrong. Furthermore, in terms of potential enforcement of such an occupancy condition, I appreciate that this may not be an easy task. However, this does not mean that such a condition would fail the tests outlined in the Framework.
12. In failing to properly consider the imposition of a planning condition to address the obvious harm of an independent dwelling, I find that the appellant has been put to unnecessary expense as a result of having to submit an appeal against the Councils decision.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to the refusal of the appeal application and therefore a full award of costs is justified in this respect.

Costs Order

14. 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 the Bedford Borough Council shall pay to Mr Rob Jones, 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.
15. The applicant is now invited to submit to the 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.

Chris Forrett

INSPECTOR