



Costs Decision

Site visit made on 7 January 2020

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th February 2020

Costs application in relation to Appeal Ref: APP/H2265/D/19/3236885 Bewley Lane House, Bewley Lane, Plaxtol, Sevenoaks, TN15 0PS

- 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 S Paget-Brown for a full award of costs against Tonbridge & Malling Borough Council.
 - The appeal was against the refusal of planning permission for construction of a garden room extension.
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Decision

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

Reasons

2. 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 expense in the appeal process.
3. The applicant considers the Council was unreasonable in not taking the Lawful Development Certificate¹ for an outbuilding as a potential fallback position when determining the application. In doing so the applicant asserts that the Council behaved irrationally in dismissing case law established through *Mansell vs Tonbridge and Malling Borough Council 2017*² as irrelevant to the case with no useful comparisons to the development proposal. He also considered that the Council should have taken into account the removal of permitted development rights as a means to outweigh any harm to the Green Belt.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs by acting contrary to, or not following, well-established case law; not determining similar cases in a consistent manner; refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead; and preventing or delaying development which should clearly be permitted having regard to the development plan and any other material consideration.

¹ Council Ref: 19/00520/LDP

² Michael Mansell vs Tonbridge and Malling Borough Council & others [2017] EWCA Civ 1314, [2016] EWHC 2832 (Admin)

5. The Council, in its delegated report, set out the reasons why it considered the development of the outbuilding to be nothing more than theoretical. Whilst the applicant disagreed with this assessment, I am satisfied that the Council did not disregard the Mansell judgement and did consider the materiality of the fallback position. The Council, as decision maker, was entitled to determine what weight it would give to the fallback position which it did. The Council did not behave unreasonably in this respect.
6. The Council addressed the removal of permitted development rights in its delegated report. Although the applicant did not agree with the Council's conclusions on this, this does not mean the Council behaved unreasonably.
7. Having received the refusal, the applicant had the opportunity to challenge the weight that the Council had given to each of those issues through the appeal process, in the hope of securing a different outcome. In doing so he has not incurred unnecessary or wasted expense.
8. It will be seen from my decision that I have had regard to the 'fallback' proposal, the Mansell judgement and the possibility of removal of permitted development rights as part of my assessment.
9. I have found that the Council has followed well-established case law and took a consistent approach to similar cases in its determination of this application. I have also found that the Council behaved reasonably by concluding that removal of permitted development rights would not overcome the harm it had identified.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

Rachael Pipkin

INSPECTOR