
Costs Decision

Site visit made on 11 December 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Costs application in relation to Appeal Ref: APP/P2935/W/19/3237751 The Old Byre, B6345 East Thirston Village, East Thirston NE65 9EJ

- 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 C Wade for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of planning permission for Construction of a detached dwelling with detached garage without complying with conditions attached to planning permission Ref 13/01837/FUL, dated 10 September 2013.
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Decision

1. No award of costs is made.

Reasons

2. 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 appeals process.
3. The appeal which forms the subject of the cost claim relates to the removal of planning conditions attached to a planning permission granted in 2013 which, in summary, require:
 - The access to the Byre, East Thirston to be improved.
 - The removal of permitted rights which could prevent the conversion of a detached garage to living accommodation.
 - The removal of permitted development rights for other minor changes to the property, for example the insertion of additional windows, and free standing structures within the curtilage of the property.
4. The PPG provides examples of the type of behaviour by a local planning authority which may give rise to an award of costs. The list is not exhaustive, however it includes the situation where a local planning authority imposes a condition which is not necessary or reasonable in all other respects and therefore not compliant with the Framework.
5. The Applicant, having completed the major part of the work in the construction of the approved dwelling, wishes to be relieved of the undertaking regarding the improvement of the access, and to not have his rights to carry out works to the property under permitted development restrained, including the possible conversion of the detached garage. Therefore, the crux of Applicant's claim is

that the attachment of these planning condition was unnecessary and the subsequent decision of the Council to refuse permission to remove the conditions unreasonable.

6. In my decision on the appeal, I have allowed the removal of the condition specifically controlling the future conversion of the garage to residential accommodation. That does not of itself mean that the Council's decision to refuse the application to remove the condition was unreasonable. The Council's reasons do not relate to a concern that the conversion of the garage could lead to problems of loss of privacy to a neighbour, or even a reduction in parking for the residents of the Byre, but rather to the policy¹ under which the original planning permission for the new dwelling was granted. The Council takes the view that the proposal was permitted as a replacement dwelling in the countryside, following the collapse of the original workshop building.
7. Regardless of whether there is an ongoing need to bring the possible conversion of the garage within planning control for the reasons stated by the Council, the condition is not necessary since another condition requires that the building, once constructed, must be retained as a garage. However, I do not find the Council's case for wishing to retain the condition to be wholly unreasonable. It is based on the unusual circumstances which led to the granting of planning permission. That planning permission has been implemented by the appellant, although the garage remains to be built.
8. In view of the above, I do not make a partial award of costs in relation to this part of the appeal, notwithstanding the PPG advice to which I have referred.
9. In terms of the conditions relating to the improvement of the access and the restriction on other permitted development rights for alterations to the dwelling, I have agreed with the Council that these conditions are necessary and reasonable subject to certain amendments and accordingly do not see circumstances which support the Applicant's claim.
10. The Applicant has drawn attention to another appeal decision which was submitted to the Council in support of his point that permitted development rights should only be removed in exceptional circumstances. I deal with that matter in the appeal decision. The planning officer's delegated report under which the application to vary the permission was refused did not mention the appeal decision, although it did specifically refer to the conclusion in the Applicant's planning statement that since the proposal was a new build dwelling, the removal of permitted development rights would normally only be appropriate where exceptional circumstances exist. In any event the circumstances in the two appeals may be very different, and even had the Council disregarded the other case, which is unlikely, that of itself would not constitute unreasonable behaviour.
11. In this case the Council's ultimate decision was reasonably based on the interpretation of policies in the development plan and other material considerations.
12. For the reasons given, it has not been demonstrated that the Council has acted unreasonably. As such there can be no question that the Applicant was put to unnecessary or wasted expense in the appeal process.

¹ Policy H24 of the Castle Morpeth District Local Plan. Adopted 2003

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Tim Wheeler

INSPECTOR