



Costs Decision

Site visit made on 3 February 2020

by S A Schinaia MSc EngD FGS

an Inspector appointed by the Secretary of State

Decision date: 12th May 2020

Costs application in relation to Appeal Ref: APP/V2635/W/19/3238651 Goldcrest House, Avondale Road, South Creake NR21 9PH

- 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 Mr C Yarham for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The appeal was against the refusal of planning permission for extension of residential curtilage for use as garden area.
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Decision

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

Reasons

2. Planning Practice Guidance 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 application relies on the fact that the council has tested the planning application of a garden extension against Policies DM2 and DM3 of the Site Allocations and Development Management Policies Plan (SADMP) (2016) and based the refusal of the planning permission on those policies, while the Planning Inspector of a previous appeal¹ on the same type of development had already established that there was no conflict between the two policies and the proposal of a garden extension.
4. The Inspector refused the appeal because he considered the scale of the garden out of keeping with scale of residential gardens in the area and therefore contrary to Policy CS06 of the King's Lynn and West Norfolk Borough Council Core Strategy (2011), which seeks to maintain the local character of the area. The current appeal is against the refusal of planning permission for a garden extension of about 80% of the previous application.
5. The appellant contends that the council ignored "the previous appeal decision and the comments made by the Planning Inspector, which constitutes unreasonable behaviour, and instead chose to rely on policies that the proposal had already been found to be in compliance with and gave inadequate consideration to the significance of the reduction in the scale of the proposal with regards to Policy CS06."

¹ APP/V2635/W/18/3209943

6. The appellant claims that he has incurred unnecessary or wasted expense in commissioning professional assistance for preparing and submitting a planning appeal for an application that is policy compliant and, therefore, should have been approved without the need to appeal.
7. Planning Practice Guidance indicates that local planning authorities will be at risk of an award being made against them if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and/or act contrary to, or not follow, well-established case law.
8. Policies DM2 of the SADMP seeks to restrict development outside of the defined development boundaries and designated as countryside. DM3 of the SADMP seeks to restrict development in 'Smaller Villages and Hamlets', such as South Creake, to that suitable to rural areas. I have noted that in their reasoning both the council and the Planning Officer have referred to Policies DM2 and DM3 because they are relevant to South Creake and the appeal site. However, the decision to refuse the planning application has been based upon a conflict with Policy CS06 of the Core Strategy.
9. In my decision I have set out that I consider the proposal to be in conflict with Policy CS06 of Core Strategy and Policies DM2 and DM3 of the SADMP, as the proposed development does not fall in any of the categories considered acceptable by the two policies.
10. Therefore, I am satisfied that the council in refusing the application has not ignored the previous appeal decision² and does not rely on policies that the proposal was found to be in compliance with in that appeal.
11. As a result, the council has not acted unreasonably in this case. As such there can be no question that the applicant has incurred unnecessary expense.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

S A Schinaia

Inspector

² APP/V2635/W/18/3209943