
Costs Decision

Site visits made on 17 December 2019 and 20 May 2020.

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2020

Costs application in relation to Appeal Ref: APP/E2205/W/19/3235199 Caradon, Mill Lane, Pluckley, TN27 0SL

- 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 Mrs V Buchanan for a full award of costs against Ashford Borough Council.
 - The appeal was against the refusal of planning permission for retrospective application for the siting of a log cabin mobile home annex and its ancillary use as staff accommodation in association with Caradon.
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Decision

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

Reasons

2. Planning Practice Guidance ("PPG") advises that parties in planning appeals and other planning proceedings normally meet their own expenses. However, 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 appeal process. PPG confirms that costs applications may relate to events before the appeal or other proceeding was brought.
3. In this case, planning permission was refused on the basis of a single issue: alleged non-compliance with the Council's adopted policy on detached annexes. The Council identify the most relevant policy: HOU9 of the Ashford Borough Local Plan (2019) on its decision notice. This sets out criteria that must be met where such development is proposed. The delegated report discusses the various criteria and explains why the proposal was considered to fail this policy. Amongst other things, the Council judged that due to its siting and appearance there would not be a clear dependency between the annex and the host building, and that the policy was therefore breached. This was reflected in its response to the appeal.
4. Whilst the planning appeal was ultimately allowed, whether or not a clear dependency exists is a matter of planning judgment. The Council substantiated its position and did not act unreasonably in relation to this issue. The appellant raises other issues in the Council's approach to the planning application, which I consider further below.

Fallback

5. It is alleged that the Council did not give full consideration to two alternative fallback positions. The first is that the building could be regarded as a mobile

home and would not therefore require planning permission. The second is that an outbuilding of a similar size could be constructed on the land as permitted development.

6. Mobile homes: Whilst there are structural similarities between the development and a caravan, the effect of granting planning permission as sought by the application that led to this appeal would be to allow the retention of the structure in this location as a permanent building. This amounts to a different character of development to a caravan: permanent as opposed to moveable. The fact that caravans can be sited on land without necessarily requiring planning permission does not automatically justify such permanent development, even if it has a very similar external appearance.
7. Permitted Development: It is alternatively argued that the physical structure could be regarded as an outbuilding falling within Class E of schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The Council appear to accept that this is the case. However, it maintains that as it comprises staff accommodation, it would not be incidental to the host dwelling. Consequently, whilst it may be that a structure with a similar appearance could be built under permitted development rights, there was no agreed permitted development fallback position, given the envisaged use of the building.
8. In conclusion, case law has established that fallback can be a relevant material consideration, and this is also acknowledged in other various planning appeal decisions. However, neither position described above supports the view that a similar structure could be placed on the site without planning permission, given the permanent use envisaged by this planning application. The Council did not therefore act unreasonably in disregarding the arguments made by the applicant to this effect, in support of their case.

Use of planning conditions

9. It is also argued that the proposal could have been made acceptable by planning conditions. However, the conflict identified with policy HOU9 of the Local Plan related to the principle of development, given the siting of the annex away from the main building. Whilst a condition could be used to ensure that the development remains ancillary to the main residential dwelling, it could not overcome the concern raised about the siting of the building. As such, the Council did not act unreasonably in failing to grant planning permission subject to conditions.

Not dealing with similar cases in a consistent manner

10. The Council approved a detached annex at the property known as Ridge House a short distance away from Caradon. However, the approved annex at Ridge House appears closer to the host building than the appeal proposal at Caradon, which would be set back well in-to its rear garden. As such, there are significant differences between these developments. The wording of the policy on detached annexes necessitates a degree of individual judgement, to be exercised on a case by case basis. The Council adequately explained why it considered the proposal at Caradon conflicted with the policy, in this case.

Lack of co-operation and delays

11. In applying for planning permission, the supporting statement made reference to a personal need on the part of the appellant for the proposed development. Some of this information was contested by various interested parties, with counter evidence provided. It is clear that a significant amount of information was being generated. In this context, the Council sought to ensure that all the relevant information upon which it was basing its decision was in the public domain, whilst also complying with data protection rules. On review, this appears to be the main cause of the delays in the decision-making process and in uploading information to its website, and the additional consultation.
12. As part of this process there were extensive written exchanges with both the applicant and interested parties. However, the primary purpose appears to be to manage the amount of information provided to bring the case to a conclusion. None of the written evidence before me demonstrates that the Council were unfairly favouring objectors to the scheme. It was reasonable for officers to provide advice on how to make comments in a way that complies with legislation. Correspondence with interested parties also took place outside the formal planning application process in connection with the associated enforcement case. However, this is a normal part of the planning process. It does not comprise unreasonable behaviour for the purpose of this decision.
13. It is apparent that several different case officers dealt with the site and the various applications received on it, and there was a change in case officer whilst the planning application in question was being considered by the Council. At one point the applicant was informally advised that the application would be approved, however this does not appear to have been agreed with senior officers and was then changed, following the appointment of a new case officer. Whilst I appreciate that this would have been frustrating, nothing is certain until a decision notice has been issued; the Council is able to change its mind about the acceptability of a proposal before a decision is issued. The applicant was kept updated on the Council's position by letter and email.
14. In the circumstances described above, it was reasonable for the Council to ultimately cease discussing the case with the applicant and draw the matter to a close by refusing planning permission. The applicant could elect to submit an appeal, which she did. As such the Council did not unreasonably fail to co-operate with the applicant, nor did it unreasonably delay the processing of the case. There is no evidence of unreasonable behaviour in how it handled the information associated with the proposal.

Other Issues and Conclusion

15. Various other allegations are made against the Council, including concerns about the conduct of Members. However, these matters fall outside the remit of this decision. The important point here is that, on the main planning issue, the Council substantiated its position in refusing planning permission. None of the procedural concerns cited by the applicant amount to unreasonable behaviour, in the context of this case. As such, unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated. Neither a partial nor full award of costs is justified.

Neil Holdsworth

INSPECTOR