
Costs Decision

Site visit made on 16 July 2020

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2020

Costs application in relation to Appeal Ref: APP/Z4718/D/20/3249481 Meadowlands, Briestfield Road, Briestfield, Dewsbury WF12 0PA

- 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 P Oldfield for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for a lean to garage to side and garden room extension to rear.
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Decision

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

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 appeal process.
3. The PPG outlines that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. One example of such unreasonable behaviour is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The applicant seeks a full award of costs on the basis that the Council's behaviour in refusing the application was unreasonable.
5. The Council in their assessment found that the proposal complied with paragraph 145 of the Framework, that is, that the development was not inappropriate in the Green Belt, yet proceeded to refuse planning permission due, in part, to the harm to the openness of the Green Belt, in light of the planning history of the site.
6. The planning history relates to the existing dwelling, that was granted consent on the site. The dwelling was found to be materially larger than the dwelling which it replaced, yet the Council found that very special circumstances existed, namely the permitted development fall-back position, with an

approved Certificate of Lawful Development for extensions to the previous property.

7. It is not for me to scrutinise the Council's findings on the previous application. However, the Council would, or clearly should, have been aware that the 'replacement' dwelling would go on to form the 'original' dwelling when considering any future extensions to it.
8. When the Council decided that the proposal was not inappropriate development in the Green Belt they should not have proceeded to make the impact on openness a determinative factor in their assessment, as the impact on openness is implicitly taken into account in the relevant exceptions outlined in paragraph 145 of the Framework. The planning history, or any previous discussions in relation to the previous consent, should not have been elevated above the compliance of the proposal with established local and national planning policy to the extent that permission was refused.
9. In relation to the effect of the development on the character and appearance of the area, although it can be seen from my decision that I disagree with the Council's decision in this respect, I find that the Council did not act unreasonably in refusing planning permission on this basis. Following the decision, I consider that the Council provided a reasonable and objective analysis to substantiate its reason for refusal in this regard.
10. As a result, it follows that I cannot agree that the Council has acted unreasonably in relation to its consideration with regard to the effect on the character and appearance of the area. As such there can be no question that the Applicant was put to unnecessary or wasted expense in this regard.

Conclusion

11. The Council's reason for refusing planning permission, as set out in its Decision Notice consists of two distinct elements: the finding that the development would cause harm to the openness of the Green Belt and harm to the character and appearance of the area, which would conflict with Policies LP24 and LP57 of the Local Plan and Chapters 12 and 13 of the Framework. I have found that the Council behaved unreasonably in reaching the first of these conclusions, but not the second.
12. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the first part of the Council's reason for refusal, is justified.

Costs Order

13. 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 Kirklees Metropolitan Borough Council shall pay to Mr P Oldfield the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the first part of the Council's reason for refusal, which concerned alleged conflict with Policy LP57 of the Local Plan and Chapter 13 of the Framework; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Kirklees Metropolitan 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.

A M Nilsson

INSPECTOR