



Costs Decision

Site visit made on 30 July 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Costs application in relation to Appeal Ref: APP/X1165/W/20/3251621 19 Waterside Road, Churston With Galmpton, Paignton TQ4 6LJ

- 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 Alan Tucker for a full award of costs against Torbay Council.
 - The appeal was against the refusal of planning permission for the alterations and extension to existing domestic garage to provide ancillary accommodation.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant seeks a full award of costs, in summary, because the Council has over a period of time resisted the proposals, made unnecessary changes to the description of the development with a previous proposal and this has all led the applicant to aborted and additional costs with this and earlier applications. With the latest application, which was amended to seek to address the Council's design and impact concerns, it was again made clear that only ancillary accommodation was sought. A planning condition was proposed to seek to demonstrate that this was the case and yet the Council still determined the application on the basis that it was tantamount to a new dwelling.
4. It is explained that without the resistance of the Council the accommodation would have been in use by the applicant's relatives during the pandemic and this would have prevented excessive travel to care for them at a distance.
5. In conclusion, the applicant sets out that the continued resistance and unwillingness of the Council to discuss the proposal, and what the appellant is trying to achieve, has led to numerous application submissions, the requirements for additional and revised plans and further professional advice on how to proceed. This latest refusal has led to additional costs at the appeal stage.
6. I do not have before me an appeal statement or a response to the costs claim from the Council. I have therefore based my consideration of the approach of

- the Council in respect of the costs claim on the analysis and conclusions in the original planning report and the related reasons for refusal.
7. The Guidance advises that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case. The Guidance advises on the type of behaviour that may give rise to a substantive award of costs against a local planning authority and this includes the failure to produce evidence to substantiate each reason for refusal on appeal, refusing planning permission on a planning ground capable of being dealt with by conditions, and acting contrary to, or not following, well-established case law.
 8. In this case, the applicant made it clear from the application stage the ancillary nature of the proposal. Included within the original submission to the Council in the Planning, Design and Access Statement was an analysis of the relevant law and included a relevant appeal decision where the issue of whether an outbuilding could lawfully be used as ancillary accommodation was analysed. These submissions refer to issues that are applicable to the present scheme and highlighted the case of *Uttlesford DC v SSE & White [1992]*.
 9. The Council in the planning report sets out the accommodation proposed and judges that this would be self-contained. Largely on this basis the report comes to the view that the application proposes the formation of a separate self-contained planning unit and the application should be assessed against the criteria for a new dwelling. However, it is evident from *Uttlesford DC* that simply because the accommodation could provide for independent day to day living it would not necessarily become a separate planning unit from the main dwelling – instead it was a matter of fact and degree.
 10. The Council did not examine in detail the circumstances of the particular case. It appears to give little weight to the stated intentions of the applicant, the wording of the description of the development, whether the condition which the appellant offered would address the concerns with the nature of the accommodation or the physical circumstances of the proposed accommodation located to the rear of the main dwelling with the sharing of facilities such as the parking and amenity areas. Furthermore, the Council appear to have made little direct or detailed reference and assessment of the relevant case law on this matter.
 11. As a consequence, the Council appear to have come to a conclusion that a separate planning unit would be formed and the proposal was tantamount to a separate dwelling without an adequate analysis of the relevant planning matters. If the Council had addressed these matters appropriately it was likely to have concluded that the use of the outbuilding could be restricted to ancillary accommodation by a suitably worded planning condition. Even if it disagreed on these matters there should have been a more detailed analysis as to why. Overall, this constitutes unreasonable behaviour.
 12. It follows that the second and fourth reasons for refusal were not well founded because they were based on the assumption that the development would be tantamount to a separate dwelling. These reasons for refusal could have been avoided if the Council had given adequate analysis to this matter. This led to the applicant having to address these matters at the appeal stage and this led to unnecessary and wasted expense in the appeal process.

13. The second reason for refusal concerned the accuracy of the submitted plans. The applicant has indicated that the layout/block plan is correct in the latest submission, however, it appears that the OS map/site location plan does not show the latest addition to the back of the dwelling. Whether this should have formed a reason for refusal is debateable but in respect of the OS map/site location plan the Council is correct. This matter has been clarified at the appeal stage by the appellant and it was not unreasonable behaviour for the Council to highlight this issue.
14. The first reason for refusal, in summary, explains that the siting, scale and design of the proposal would result in a cramped and incongruous form of development to the rear garden environment detrimental to the character of the area. This matter is expanded in more detail in the planning report. It will be seen from the decision that I agree with the Council on this matter. However, the reason for refusal also says that the development expresses a form of development that is tantamount to a dwelling house. This additional wording could be considered somewhat confusing. However, I consider that the reason for refusal in itself, and particularly so as supported by the planning report, is adequate and sufficiently clear when considered as a whole. Consequently, there was no unreasonable behaviour with the concerns raised in this reason for refusal regarding the physical impact of the proposal on the area.
15. I have noted the concerns of the applicant in relation to the conduct of the Council generally, however, the award of costs cannot be claimed for the period during the determination of the planning application. Also, awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.

Conclusion

16. In conclusion, correctly highlighting that one of the plans was not accurate was not unreasonable in the circumstances and in any case this did not put the appellant to any material level of additional expense in responding to this matter. The first reason for refusal, as it predominantly concerned the physical impact of the proposal on the character and appearance of the area, was well founded although I have highlighted some issues above. Overall, there was no unreasonable behaviour in respect of this reason for refusal.
17. However, I conclude that the Council acted unreasonably in the way that it concluded that the extended outbuilding was tantamount to a dwelling house and subsequently determined the application on that basis. If it had examined the proposal in the light of all the circumstances and case law, and considered whether a planning condition could ensure the ancillary use of the accommodation, this would have, in all likelihood, addressed the related concerns. This was unreasonable behaviour that led to two of the reasons for refusal. The appellant was put to unnecessary and wasted expense at the appeal stage in addressing the Council's objections based on its view that the scheme was tantamount to a separate dwelling. I therefore determine that a partial award of costs is justified in this regard.

Costs Order

18. 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 Torbay Council shall pay to Mr Alan Tucker, the costs of the appeal proceedings described in the heading of this decision limited to those costs at the appeal stage incurred in addressing the Council's concern that the proposal was tantamount to a separate dwelling house, such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Torbay Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching an agreement as to the amount.

David Wyborn

INSPECTOR