



Costs Decision

Site visit made on 2 September 2020

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2020

Costs application in relation to Appeal Ref: APP/N1920/W/20/3251004 Kendal Hall Farm, Watling Street, Radlett WD7 7LH

- 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 Ciaran Purcell for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing buildings and structures and erection of 2 No. 4 bed detached dwellings with carports/refuse stores and associated landscaping.
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Decision

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

Reasons

2. Paragraph 030 of the national Planning Practice Guidance (the PPG) states that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the PPG states that unreasonable behaviour by local planning authorities includes unreasonably refusing planning applications, 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 contends that the Council acted unreasonably in failing to consider the impact of the existing buildings on site on the openness of the Green Belt in its first reason for refusal. In disregarding the effect of existing buildings on openness due to their condition, the Council based its decision on a contention unsupported by case law. The Council based its second reason for refusal on the design of the proposed development, which would be the subject of a future reserved matters application, as well as repeating grounds of loss of openness.
5. The Council responds that the development would involve an overall increase in both the volume and footprint of buildings on site, as Building I is dilapidated with no roof or walls, and Building H is of limited construction comprising a corrugated roof supported by wooden posts, neither end is enclosed and the southern elevation is also completely open.

6. Regarding the matter of openness, both Buildings H and I are of permanent construction and are substantial structures. It is not uncommon for farm buildings to be open-sided, and this does not detract from their impact on openness. Building I had a roof in place during my site visit, and evidence submitted in support of the appeal showed that this was also historically the case, although at one point the building did not have a roof. I saw no reason to discount the effect of Buildings H and I on the openness of the Green Belt. Having taken account of the volume and footprint of all four buildings on the appeal site, I found that the development proposed would not cause an overall loss of openness. I therefore consider that the Council acted unreasonably in discounting buildings H and I and refusing permission based on loss of openness in the Green Belt.
7. The Council has not responded to the applicant's claim regarding its second reason for refusal. The appeal sought outline planning permission with all matters reserved except for access. The detailed layout and design of the two proposed houses could be developed via a reserved matters application so an arrangement compatible with the approved development on the adjacent site would be achieved. I therefore consider that the Council also acted unreasonably in refusing planning permission on the grounds of the design of the development and the effect on the character of the area.

Conclusion

8. I have considered the points raised by both parties, and the evidence contained in the appeal submissions. I find that unreasonable behaviour on the part of the Council has been demonstrated that has resulted in unnecessary or wasted expense as described in the PPG. A full award of costs is therefore justified to cover the expenses incurred by the applicant.

Costs Order

9. 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 Hertsmere Borough Council shall pay to Mr Ciaran Purcell, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Hertsmere 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.

M Chalk

INSPECTOR