
Costs Decision

Site visit made on 10 November 2020

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 17 December 2020

Costs application in relation to Appeal Ref: APP/J1915/W/20/3252551 Unit 1 and 2, Monks Green Farm, Mangrove Lane, Hertford, Hertfordshire SG13 8QL

- 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 William Ashley (William Ashley and Partners) for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a barn conversion to create two dwellings, creation of first floor insertion of windows and doors to all elevations and four roof lights.
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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 (the 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. Local Planning Authorities are encouraged, through the PPG, to exercise their development management responsibilities by relying only on reasons which stand up to scrutiny on the planning merits of the case.
3. The Council identified a single putative reason for refusal. This contained two separate strands: the first pertaining to the effects of the development upon the Green Belt; and the second relating to whether the appeal site was an appropriate location for a residential development.
4. In respect of whether the proposed development was inappropriate, the Council has referenced Paragraph 145 of the National Planning Policy Framework (the Framework). However, as will be noted from my appeal decision, this paragraph relates to the provision of new buildings within the Green Belt and is therefore not relevant to the consideration of the appeal scheme. This is because the appeal scheme pertains to the conversion of an existing building, rather than the erection of a new one.
5. In consequence, this amounts to unreasonable behaviour as had the Council fully considered Paragraph 146 and the precise wording of Paragraph 145 of the Framework, a different view might have been reached. Therefore, the applicant was put to unnecessary expense in pursuing an appeal, as it was

necessary to include an assessment regarding the merits of the proposal in respect of these points.

6. The Council has highlighted a breach of a development plan policy arising from the location of the development. Whilst I have disagreed with the Council's view regarding the harm arising from the breach, the fact that an assessment was made against a relevant and adopted development plan policy means that this cannot be considered to represent unreasonable behaviour.
7. Accordingly, in this regard, the Council's case was sufficiently explained and therefore, I can find no evidence of unreasonable behaviour within this particular matter. I therefore do not believe that this has resulted in unnecessary expense on the part of the applicant.
8. I note concerns raised by the appellant regarding the fact that the planning application was not formally determined by the Council. However, the Council has identified a putative reason for the refusal of planning permission. Therefore, it is reasonable to assume that the Council determined the planning application, it would have been a reason consistent with the putative reasoning. In consequence, the applicant would still have been required to make an appeal against the refusal of planning permission.
9. In result of this, I do not believe that this amounts to unreasonable behaviour that has caused unnecessary expense on the part of the applicant.

Conclusion

10. The Council's putative reason for refusal identified two distinct strands. One pertained to whether the proposal was inappropriate in the Green Belt and the second regarding the suitability of the site as a location for residential development. I have found that the Council acted unreasonably in assessing the proposal against the provisions of Paragraph 145 of the Framework, however, the second strand (the suitability of the site) was reasonable. Accordingly, I conclude that a partial award of costs to contest the first strand is justified.

Costs Order

11. 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 East Hertfordshire District Council shall pay to Mr William Ashley (William Ashley and Partners) the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the appeal process contesting matters pertaining to the effect of the development upon the Green Belt.
12. The applicant is now invited to submit to the 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Benjamin Clarke

INSPECTOR