



Costs Decision

Site visit made on 9 February 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2021

Costs application in relation to Appeal Ref: APP/J1535/D/20/3263982 Grindelwald, Middle Street, Nazeing, Waltham Abbey EN9 2LB

- 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 G Branch for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for proposed development described as 'existing bungalow roof removed & proposed 1st floor & two storey side/rear extension and alterations to create two storey dwelling & single storey side extension to create garage/utility room. Existing garage to be demolished'.
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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 PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party where it has behaved unreasonably and this has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations. Other grounds include that the Council fails to produce evidence to substantiate each reason for refusal at appeal; or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by an objective analysis.
4. The crux of the applicant's costs claim is that the Council incorrectly described the appeal property as a single storey detached property in the officer's report, and had the existing dwelling been assessed as a two storey property there would have been no sustainable reason to refuse the application. In addition, the applicant draws attention to other planning applications granted by the Council for alterations to single storey dwellings to provide first floor habitable living accommodation.
5. The Council states that despite the description of the site within the officer's report, the application was assessed on the basis that the existing dwelling is a chalet bungalow with rooms in the roof space. The Council considers chalet bungalows to meet the definition of a bungalow and fall under the protection of Policy H1(f) of the emerging Epping Forest District Local Plan Submission Version 2017 (the LPSV). It states that consent was granted for planning

applications EPF/1377/20 and EPF/2055/20 because they remained as chalet bungalows, and the current appeal scheme would introduce a full first floor resulting in a traditional 2 storey dwelling, contrary to Policy H1(f).

6. Notwithstanding the comments provided by the Council, there is no evidence before me that it had regard to the existing layout of the appeal property, including the first-floor accommodation. In particular, the officer's report describes a "single storey detached property". The supporting text of LPSV Policy H1 specifically refers to the importance of bungalows in terms of supporting the needs for accessible housing. In this context, there is little evidence that the Council assessed whether the layout of the existing property contributes to the provision of accessible housing, and it did not provide adequate analysis to substantiate the alleged harm that would be caused by the proposal. As can be seen from my decision, I have found that the proposed layout would be more accessible than the existing dwelling.
7. Consequently, the Council has failed to substantiate the reason for refusal, and it refused planning permission for development which should clearly have been permitted.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and therefore a full award of costs is justified.

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 Epping Forest District Council shall pay to Mr G Branch the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Epping Forest District 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.

C Osgathorp

INSPECTOR