
Costs Decision

Site visit made on 1 July 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2021

Costs application in relation to Appeal Ref: APP/B2355/D/21/3271697 51 Blackburn Road, Edenfield, Bury BL0 0JD

- 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 Farrell for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of planning permission for a hip to gable roof extension with rear dormer.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG states that "*where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application*".
3. The applicant claims that the local planning authority (LPA) acted unreasonably in so far that; they did not acknowledge that the Supplementary Planning Document (SPD) is out of date and that hip to gable extensions are generally permitted development; the reason for refusal refers to 'open land' when the Local Plan proposes a development of 400 houses; that they did not consider either the imposition of planning conditions and/or sought reasonable amendments to the application in order to deliver a sustainable form of development; and that they did not submit the appeal questionnaire and other documents.
4. On the first ground, the SPD was adopted by the Council in 2008. Although it predates the National Planning Policy Framework, it remains one of the Council's adopted SPD's. It was essentially a matter of planning judgement in terms of the weight given to the document. Although the Council did not explicitly comment on whether hip to gable extensions are generally permitted development, this was but one element of the development before them, which when taken as a whole, the parties agree, requires planning permission. I therefore do not find it unreasonable that the Council determined the

application in the manner in which they did, that is, in accordance with the development plan unless material considerations indicate otherwise, as required by s38(6) of the Act¹.

5. The reference in the reason for refusal to 'open land' relates to the land either side of the terrace on which the appeal property is located. The Council acknowledged in the Officer Report that it was allocated in the emerging local plan for residential development. Given that the plan is not adopted, and maybe subject to modifications, or that there is no indication of what land would be built on or remain 'open' as part of any future development, I do not find that the Council acted unreasonably in referring to the current state of the land, whilst recognising its potential allocation.
6. The applicant considers that the Council did not consider the imposition of planning conditions and/or sought reasonable amendments to the application in order to deliver a sustainable form of development. The applicant does however outline that amendments were requested to the dormer window. The Council have outlined how the amendments to the dormer were discussed to reflect guidance in the SPD. Whilst the applicant may have assumed that the discussion regarding amendments was an indication of a favourable outcome, and that the ultimate refusal of planning permission would no doubt be frustrating, it does not amount to unreasonable behaviour. Indications of recommendations do not bind the decision maker until their formal decision has been issued. It is unlikely that any planning conditions would have addressed the Council's concern. Either way, it is not a demonstration of unreasonable behaviour in this case.
7. The applicant considers that the Council's failure to submit the appeal questionnaire and other documents, despite being reminded, amounts to unreasonable behaviour. As the appeal is made via the Householder Appeals Service, I do not find that the delay in submitting the documents, amounting to around 3 working days, has caused the applicant to incur unnecessary or wasted expense in the appeal process.
8. I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns about the impact of the development which justified its decision. The applicant had to address those concerns in any event.

Conclusion

9. For the above reasons, I conclude that the Council has not acted unreasonably, and that the applicant has not been put to wasted time and expense in pursuing the appeal. Therefore, a full award of costs is not justified.

A M Nilsson

INSPECTOR

¹ Planning and Compulsory Purchase Act 2004