

Costs Decision

Site visit made on 23 September 2021

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021.

Costs application in relation to Appeal Ref: APP/G2245/D/21/3270994 Lilac Bank, Billet Hill, Ash TN15 7HE

- 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 John Murray for a full award of costs against Sevenoaks District Council.
 - The appeal was made against the refusal of planning permission for the demolition of single storey flank extension and erection of reduced width two storey flank extension together with Dormer windows and internal alterations.
-

Decision

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

Reasons

2. The Planning Practice Guidance (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. The PPG provides examples of the behaviour that could give rise to an award of costs against a Local Planning Authority (LPA). One such example is a failure to provide evidence to substantiate each reason for refusal. Another example is where the LPA makes vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 3. In determining the application and having particular regard to Policy GB1 of the Allocations and Development Management Plan (ADMP), the Council found the proposal to be a disproportionately large addition and harmful to the openness of the Green Belt (GB). However, in doing so, the Council made an error that may have been material to the outcome of the planning decision. It has also failed to take the opportunity to clearly explain its objections.
 4. Firstly, the Council states that the proposal would exceed the 50% size threshold for dwelling extensions in the Green Belt (GB), which is set out in ADMP Policy GB1. However, the numerical assessment of proportionality in the Officer's report is based on the planning history of the wrong property. The Council has apologised for that error. However, its judgement at that time was clearly based on inaccurate information.
 5. While the Council's reply to the costs application refers to a historic (undated) map and differences in the construction and appearance of the flat roof side
-

projection at Lilac Bank compared to the main 2-storey dwelling, it does not provide an estimate of the proposal's size relative to the host building, as originally constructed or with later additions. Without that information, it is unclear exactly how the Council would still conclude that the proposal would breach the 50% size threshold and therefore give rise to a conflict with ADMP Policy GB1. This is important because the outcome could determine whether or not the proposal could be an exception to inappropriate development in the GB under the Framework.

6. Secondly, the reason for refusal states that the proposal would result in a significant increase in mass, bulk and scale and that it would be harmful to the openness of the GB. Few details have been provided to elucidate this opinion other than generally describing the proposal as a 'considerably large extension to the dwelling'. There is no explicit recognition in the Officer's report, for instance, that the proposal would remove a sizeable side extension and occupy a reduced footprint, as the description of development makes clear. Both of these elements would also affect the openness of the GB.
7. Thirdly, even if the proposal was regarded to be a disproportionate addition in the context of ADMP Policy GB1 and harmful to the openness of the GB it does not automatically mean that it is unacceptable. It is still necessary to establish whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal. There is no indication from the evidence that the Green Belt 'balancing exercise' was carried out.
8. For all of these reasons, I consider that the Council has behaved unreasonably. It has failed to clearly show why the proposal should not proceed and has not substantiated the reason for refusal. The Council's evidence does not provide a respectable basis for its stance. It has prevented a scheme that for the reasons given in my decision should have been permitted. The applicant has had to recourse to appeal and incur the associated costs of doing so, which in my opinion could and should have been avoided. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A full award of costs is therefore 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 Sevenoaks District Council shall pay to Mr John Murray, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Sevenoaks 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.

Gary Deane

INSPECTOR