

Costs Decision

Site visit made on 16 November 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2021

Costs application in relation to Appeal Ref: APP/Z1510/W/21/3276604 Workshop Cobbs Fenn, Sible Hedingham, Halstead CO9 3RX

- 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 and Mrs Harding, Cardel and Grant for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for completion of development of two partly erected buildings into a single residence composed of a main house building with an ancillary residential annex, both entirely comprised of residential living space without complying with a condition attached to planning permission Ref 17/01236/FUL, dated 1 March 2018.
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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 (PPG) advises that costs may be awarded against a party who has behaved unreasonably and where the unreasonable behaviour has directly caused unnecessary or wasted expense in the appeal process. The PPG 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 be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It is also at risk if it makes vague, generalised or inaccurate assertions which are unsupported by any objective analysis.
3. The appeal relates to a proposal to reconfigure accommodation within the southern part of a dwelling which is under construction on the appeal site. The Council's reason for refusal stems from its concern that the proposal would result in space that could be used independently of the approved dwelling, and that this would be unacceptable in light of the location of the site within the countryside. In support of its concerns, I note a number of unsuccessful proposals for additional dwellings on the site previously.
4. I acknowledge that the music/yoga/art studio use that is now proposed for space within the southern part of the building would not be necessary accommodation to facilitate the occupation of the building as a dwelling. In addition, the only internal connection to the main living accommodation of the dwelling would be through a ground floor utility room, with no connection at first-floor level. Nevertheless, the access between the parts of the building would not be particularly awkward or impractical so as to prevent it functioning as a single dwelling. Even if the space could be used as a separate dwelling, that is not what was proposed by the development that was before the Council

to consider, and it could equally be used as additional, albeit non-essential, space to supplement the main living accommodation.

5. As recorded within my decision, a separate grant of planning permission would be required if the southern part of the building was not constructed or used as accommodation associated with the main dwelling as is proposed, or if there were a material change of use in the future to create a separate dwelling, and the building would be at risk of enforcement action if such permission were not granted. I have no firm reason to conclude that such a course of action would be unavailable to the Council, nor that it would have little chance of success, particularly given the planning history of the site and dismissed appeals.
6. I am not therefore persuaded that speculation about what may potentially occur in the future is a reasonable basis on which to withhold planning permission in this case. There is also no compelling evidence before me to demonstrate that the development as applied for would be an inappropriate use in the countryside, that it would increase the need to travel or reliance on non-sustainable modes of travel, nor that it would otherwise harm the countryside.
7. Accordingly, I find that the Council has prevented development which should clearly be permitted, and in refusing permission, it has resulted in an appeal which should not have been necessary. The Council has therefore behaved unreasonably, and the appellant has incurred unnecessary and wasted expense in contesting the appeal. While I note that the appellant has referred to advice given by the Council prior to the submission of the appeal application, the PPG makes clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal.

Conclusion

8. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. The application for a full award of costs is therefore allowed.

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 Braintree District Council shall pay to Mr and Mrs Harding, Cardel and Grant the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Braintree 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.

J Bowyer

INSPECTOR