

Costs Decision

Site visit made on 9 December 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2022

Costs application in relation to Appeal Ref: APP/R3515/D/21/3279212 23 Brockley Crescent, Ipswich IP1 5HT

- 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 Melvin Last for an award of costs against Ipswich Borough Council.
 - The appeal was made against the refusal of planning permission for the erection of residential single-storey annex (retrospective) and single-storey front extension to annex (proposed).
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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 advises that costs may be awarded where a party has behaved unreasonably and such behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The applicant's basis for claiming full costs relates to the Council's alleged unreasonable behaviour with regard to consideration of the proposal as tantamount to the erection of a separate dwelling. A number of detailed points are made in support of the costs application, but the main claim is that the Council failed to pay proper regard to Policy DM12 of the Ipswich Core Strategy and Policies Development Plan Document Review (2017) (the CSP).
 4. The Council's principal consideration of the proposal in terms of use and occupation was against Policy DM13 of the CSP, which concerns small scale infill and backland residential developments. However, Policy DM12 specifically addresses the provision of residential ancillary buildings, the use proposed here. These are two separate policies which, based on an objective reading, can be applied independently of each other to the distinct and different uses to which they refer. Indeed, if standalone ancillary annex buildings were intended to be considered against Policy DM13 then it might be expected that Policy DM12 or its supporting text would refer to this; or to the *Space and Design Guidelines* SPD already in place, which says that planning applications for detached annexes will be considered against the normal criteria for new dwellings.
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5. I acknowledge the detailed arguments both parties make about the role and status of the SPD in this case. However, the principal point, as found in the appeal decision, is that SPDs are capable of being a material consideration in planning decisions but are not part of the development plan. They should not, therefore, be a basis for deciding that a different development plan policy should be applied to the one which is most directly relevant to the proposed development in any particular case. Such an approach does not accord with Section 38(6) of the Planning and Compulsory Purchase Act 2004.
6. I have had regard to the Council's argument that it has a duty to consider the proposal as a whole, that the proposal is more akin to a dwellinghouse than an annex, and that the assessment needs to consider factors such as size, scale and relationship with the host dwelling. However, these matters can be addressed by reference to Policy DM12 alone and it seems that from any reasonable reading of this policy that is what it is designed to do.
7. A key consideration for the Council in its decision to assess the appeal proposal against Policy DM13 is that it involves a detached building. However, Policy DM12 includes criterion e., which requires that a proposed residential annex will be permitted where this is an extension that is capable of being integrated into the main dwellinghouse once the dependency need has ceased and, by implication, not a detached building. This is amplified clearly in the supporting text, at paragraph 9.88, which refers to residential annexes being considered favourably 'so long as it forms a linked extension to an existing dwellinghouse and retains some shared facilities (eg kitchen or bathroom), to ensure that it cannot evolve into a self-contained unit'.
8. Based on this policy context, I was able to consider the proposal against Policy DM12 as the most directly relevant development plan policy. It is reasonable for the applicant to expect, therefore, in these circumstances with a specific development plan policy that addresses the development applied for, for the proposal to be considered fully against that policy.
9. However, had this approach been taken by the Council, it is not possible to infer that it would have negated the need for the appeal. It appears that the specific evidence concerning the applicant's family's care needs which formed part of the appeal submissions was not available to the Council when it determined the application. This was an important material consideration in the appeal decision that outweighed the conflict with Policy DM12 regarding the annex being a detached building rather than an extension as the policy requires. The Council might not have reached the same conclusion but, nonetheless, the information was not available for it to make that assessment. Moreover, the Council considered that the proposal has a harmful effect on the character and appearance of the area, which is an assessment required by Policy DM12 as well as Policy DM13.
10. I accept the applicant's contention that case law has established the principle that detached buildings are capable of being dependent annexes to the host dwelling; that there are other appeal decisions that support this approach; and that conditions can be used to control such uses. However, in this case the Council's preference for such a use is in the form of an extension to a dwellinghouse, which is reflected as a requirement in the adopted development plan through Policy DM12. As such, legislation requires regard to be had to this

and other material considerations. It does not follow that consideration against Policy DM12 or other matters raised by the applicant would inevitably have resulted in permission being granted, thereby negating the need for the appeal.

11. Matters concerning the effect on character and appearance, and neighbouring amenity are covered by criteria in Policy DM12. In this context, it is not unreasonable for the Council to take account of the relevant Character Area for the appeal site. However, by addressing the proposal as a separate residential development the Council introduced additional policy matters that are not directly relevant to the proposal as applied for, and as addressed through Policy DM12. These include that use of the building as a separate dwelling would result in insufficient garden land and inadequate parking provision.
12. The Council refers to an appeal and related costs decision to support its approach in this case¹. However, I note in that decision that the relevant development plan policies are not specific to independent dwellings and would be relevant to any new development proposal. That is not the case here, as found above. Moreover, in terms of establishing that the proposed building could be used independently, the Inspector found that the level of accommodation proposed was significant and that there was an existing second point of access to the site. As such, there are clear differences with the current proposal.
13. Taking the above findings as a whole, it is not possible to conclude that had the Council determined the proposal against Policy DM12 it would have negated the need for the appeal. However, by failing to have full regard to this relevant policy and by introducing policy matters that are not directly related to the use proposed the Council has behaved unreasonably and will have caused the applicant some unnecessary expense through responding to these matters as part of the appeal process. Accordingly, for the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

14. 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 Ipswich Borough Council shall pay to Mr Melvin Last the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the Council's reasons for refusal as outlined in this decision, with particular reference to the reliance on Policy DM13; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Ipswich Borough 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.

J Bell-Williamson INSPECTOR

¹ APP/Z2505/D/18/3216631 dated 10 June 2019.