
Costs Decision

Site visit made on 13 December 2021

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th January 2022

Costs application in relation to Appeal Ref: APP/R0660/D/21/3277354 Lavender Farm, Gorse Lane, Astbury CW12 3NR

- 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 D Coughlan for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for a rear dormer extension to the house.
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Decision

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

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The application for an award of costs is made on both procedural and substantive grounds. Each of these is dealt with in turn below. However, given the detailed nature of the costs claim I have distilled the evidence to focus on the main points.

Procedural grounds

4. The PPG indicates that the types of behaviour that may give rise to a procedural award of costs relate to whether the local planning authority behaves reasonably in relation to procedural matters at the appeal. The applicant's claim on procedural grounds relates to issues with how the application itself was determined and it is not part of the claim that in terms of the appeal procedures the Council has acted unreasonably.
5. The PPG does address when the Council's handling of the planning application before the appeal might lead to an award of costs but this relates to when a Council has failed to determine an application within the time limits and an appeal is made against non-determination. This is not the case here.
6. Whilst the applicant has set out various reasons why he considers the Council did not properly assess the application, his conclusion that this means the Council has refused a development that clearly should have been permitted is

the type of behaviour the PPG indicates could give rise to a substantive award of costs. As such, I have addressed these matters below

Substantive grounds

7. With regard to the application for an award of costs on substantive grounds, the applicant claims that the Council has not adequately substantiated the reasons for refusing the application and has relied on vague and inaccurate assertions that are not supported by objective analysis. In addition, it is claimed that the Council have prevented a development that clearly should have been permitted having regard to the development plan, national policy and any other material considerations and also that the Council has not determined similar cases in a similar manner. The PPG indicates that, in such circumstances, costs may be awarded against an authority.
8. The application had a single reason for refusal which relates to the impact the proposal would have on the character and appearance of the host property and the surrounding area. The reason for refusal sets out the development plan policies to which the Council considered the scheme would be contrary. Although not specifying specific paragraphs it also indicates that it would be contrary to *the National Planning Policy Framework* (the Framework) and *Supplementary Planning Document 7 – Rural Development*.
9. As detailed in my appeal decision, I have found that the proposal would be acceptable in terms of its impact on the character and appearance of the area. However, I recognise that in such matters, consideration of planning applications and appeals can involve matters that are finely balanced, and are primarily a matter of judgement.
10. The delegated report, although short, sets out the Council's reasoning for why they consider that the proposed dormer would be detrimental in this regard, even if it does not provide a detailed commentary on why it considers the proposal is contrary to each policy / document referred to in the reason for refusal. For example, the report highlights that it would not respect the simple rectangular form of the building or be sympathetic to the character, which it describes. The reasoning given is specific to the appeal property and is not vague or generalised assertions. Whilst the applicant may not agree with the Council's conclusion in this respect and considers the report should have provided a more detailed analysis, and in determining the appeal I have come to a different conclusion in this regard, this does not mean that the Council have behaved unreasonably.
11. Nor does the fact that the Council may have approved dormers on other barn conversions, mean they have acted unreasonably in refusing this one. Agricultural buildings vary considerably, as can the design of dormers, and so what is acceptable on one barn may not be acceptable on another. Thus, it does not mean that the Council have necessarily been inconsistent in their decision making in refusing this application when other barn conversions have been considered acceptable.
12. The delegated report includes a number of paragraphs at the start that relate to another proposal elsewhere in the district, which the Council have indicated was a mistake. Whilst it is unfortunate that this was not rectified before the report was published, the report does go on to provide a proper assessment of the proposal, which is not affected by the erroneous paragraphs at the start.

13. Concern has also been raised that the application was not properly assessed because the delegated report refers to some policies that are not relevant and does not refer to relevant policies from the *Astbury and Moreton Neighbourhood Plan (made August 2017)* (NP) and the *Cheshire East Borough Design Guide (adopted May 2017) Volume 2: Residential Guidance* (DG), nor to any of the supporting evidence provided by the applicant or the reasoning given for why the dormer was needed.
14. The delegated report lists a number of policies from various documents that form the development plan for this part of the borough, which includes policies from the NP. In general terms these are all policies that could apply to a proposal for a domestic extension in the Green Belt, although they may not all be relevant to this specific proposal. Nonetheless, the appraisal of the proposal itself refers only to policies that are directly applicable. In addition, the fact that neither the appraisal section of the report nor the reason for refusal specifically mention policies in the NP does not mean they did not form part of the assessment. As they are listed in the policy context, it is clear that they were recognised as relevant and informed the assessment.
15. The applicant has stated that the DG indicates that dormers are a way of helping dwellings to meet future needs and provide additional accommodation. Nevertheless, this is high level generic advice and the extracts provided by the applicant make no reference to the acceptability or otherwise of dormers on dwellings created through the conversion of agricultural buildings. This presumably explains why the document is not specifically referred to in the delegated report.
16. Similarly, whilst the applicant's supporting evidence, including the reason for the need for the dormer, may not be referred to in the report specifically this does not mean that these were not considered and taken into account or that the proposal was not properly assessed. The report clearly considers the impact of the proposal on the character and appearance of the host property and in concluding that in this respect it would cause unacceptable harm, considers it would also harm the character and appearance of the locality.
17. I note the suggestion that the dormer would be permitted development if it was not on a dwelling created under Schedule 2, Part 3, Class Q, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, as this is not a fall back position the Council have not acted unreasonably in not referring to it in their assessment.
18. The applicant has highlighted that the case was allocated to an officer on 4th May 2021 and refused on 6 May 2021. During this time no site visit was made. However, the Council have stated that the case officer had in fact visited the site three times in 2020, including to consider a proposal that involved a dormer window. Given this, as the officer clearly knew the appeal site and building, I do not consider it was unreasonable that the officer did not visit the site again.
19. In addition, it is argued that, contrary to the informative on the decision notice, the Council did not work proactively with the applicant to find a solution. However, given the Council's fundamental objection to a dormer on the host property, I do not consider they have acted unreasonably in not entering into negotiations with the applicant, as it is clear that in their view minor changes to the proposal would not have been sufficient to make it acceptable.

20. I note that the Parish Council did not object to the proposal, a fact that is recorded in the delegated report. However, this represents the view of a consultee, not the formal view of the Council, who are not bound by the views of consultees.
21. Overall, although in this case I have found against the Council, I am satisfied that they have met their obligation to give proper consideration to the planning application and have justified their approach. Whilst the appellant may not agree with the Council's conclusions it does not mean that they acted unreasonably in coming to this conclusion.
22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and thus an award of costs is not justified.

Alison Partington

INSPECTOR