
Costs Decision

Sites visit made on 25 January 2022

by Nigel Harrison BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Costs application in relation to Appeal Ref: APP/R0660/D/21/3288342 (Appeal C) at Sarnia, Giantswood Lane, Somerford Booths, Congleton, CW12 2JN

- 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 Matthew Worth for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of the Council to grant prior approval under, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

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

The submissions for Mr and Mrs Matthew Worth

2. The application and response to the Council's rebuttal was made in writing.

The response by Cheshire East Council

3. The Council's response was made in writing.

Reasons

4. Parties should normally meet their own appeal costs and Paragraph 030 of the *National Planning Practice Guidance* (PPG) says that irrespective of the outcome of the appeal, costs can only be awarded against a party which has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
5. PPG Paragraph 049 states that Local Planning Authorities (LPAs) are at risk of an award of costs if they behave unreasonably with regard to the substance of the matter under appeal, for example by preventing or delaying development which should clearly be permitted, vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis, and not determining similar cases in a consistent manner.
6. The applicant says the appeal was unnecessary and prior approval was unreasonably withheld in the context of case precedents and the merits of the proposed development. The applicant refers to case precedents within Cheshire East at 'Hillside'¹ and 'Badgers Hollow'.² In the case of the resubmitted 'Hillside'

¹ Hillside, Lowes Lane, Gawsworth Case Ref: 21/2919M)

² Badgers Hollow, Greendale Lane, Mottram St Andrew Case Ref: 21/1714M)

application the Council appears to acknowledge that it previously erred in its refusal on the relative size of the first-floor addition and the existing house, and prior approval was ultimately granted. At 'Badgers Hollow', where prior approval was also granted, the officer report stated that 'only the front elevation faces a highway, and this is the only elevation that can be assessed regarding the external appearance'. The applicant also sought two legal opinions which were included within the planning statement for Appeal A.

7. The applicant says the Council was dismissive of these case precedents and gave no sound reasons why the proposals at Hillside and Badgers Hollow were acceptable and the Sarnia proposals were not.
8. There is no support within GPDO Class AA to determine that a development harmful because of its size. The principle of an upwards extension to form two storeys, and thus a considerable increase in size and bulk compared with the existing, is established by the GPDO. It follows that the matters requiring prior approval need to be interpreted within the scope of the conditions and limitations of paragraph AA.2 (3)(a)(ii). It will be seen from my decision that I considered the appearance of the proposed additional storey on that basis and concluded that the design would be acceptable and not harmful to the surrounding countryside
9. The Council says Class AA is new legislation and there will be occasions where varying decisions are made. The Council goes on to explain what it meant by the term 'disproportionate addition' and says the officer report and decision notice clearly explain that its concerns relate to the impact on the open countryside due to the increased prominence of the dwelling and its elevational design, rather than the detailed design *per se*.
10. However, a brief statement in the report simply states that the proposal would be 'a disproportionate addition', and 'therefore would harm the character and appearance of the countryside'. Although it then explains which detailed design features of the proposal are considered unacceptable, the report appears to emphasise that it was the size/bulk of the extended dwelling, rather than the design of the front elevation, that would cause most harm to the countryside setting.
11. The second part of the officer report and reason for refusal concerns matters of design rather than size, saying the dwelling would appear 'lopsided and haphazard'. Whilst I have concluded that the design would not be harmful, I am satisfied that the Council adequately substantiated its concerns. Whilst the evidence was concise, particularly in setting out what harm would be caused by the design details/fenestration, it nonetheless expressed a point of view. Indeed, where planning issues are finely balanced, as here with regard to detailed matters of design, an award of costs arising from substantive matters is unlikely to be made against the LPA.
12. Overall, I have some criticism of the inappropriate emphasis the Council placed on the extension being disproportionate in size in its reason for refusal and evidence, particularly in the face of its previous approval of comparable Class AA developments. Each appeal is determined on its own merits, and the particular circumstances of each case will vary, but I am satisfied here that some valid comparisons may be drawn.

13. However, whilst the applicant should not have had to provide evidence to contest the size/disproportionate addition issue, it would be inappropriate and impractical to disaggregate any costs expended in this regard from those expended on the more detailed aspects of design and impact on the countryside which would have been necessarily incurred in any event.
14. Therefore, although a finely balanced decision, for the reasons given above I conclude that unreasonable behaviour resulting in unnecessary expense as described in PPG paragraphs 030 and 049, has not been demonstrated in this case.

Nigel Harrison

INSPECTOR