
Costs Decision

Site visit made on 1 February 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2022

Costs application in relation to Appeal Ref: APP/M0655/D/21/3281298 Waterworks House, 1 Delph Lane, Warrington WA2 0RF

- 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 Sally-Anne Bryan and Mike Murphy for a full award of costs against Warrington Borough Council.
 - The appeal was against the refusal of planning permission for a two-storey rear extension.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises through paragraph 028 that costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Costs may be awarded to any party regardless of the outcome of the appeal.
3. Paragraph 047 of the PPG provides a non-exhaustive list of examples of unreasonable behaviour by local planning authorities on procedural grounds. This includes a failure to adhere to deadlines, which in this case includes the statutory 8-week determination period that has subsequently caused the appellant's bat survey to fall outside of the recommend 2-year validity period.
4. Paragraph 049 provides a list of types of behaviour that may give rise to a substantive award of costs. In this case, this includes requiring that the appellants enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework (the Framework), on planning conditions and obligations, or acting contrary to, or not following, well-established case law.
5. I understand the appellants frustrations with the failure of the Council to determine the proposal within the statutory 8-week period. However, the response of the Greater Manchester Ecology Unit (GMEU) details that although the survey was 'technically' due a review due to its age, their concern was primarily that the survey was not in the peak survey season and the building had some potential for bat activity. As such, an update to the survey would have been required regardless of the delay with the consultation response.

6. The appellants have set out a number of alternative scenarios whereby extensions and/or additional storeys could be added to the appeal building without the need for planning permission or using permitted development rights. While I have agreed that there is no requirement for lawful development certificates to substantiate these potential fallback positions, the prospects of these being implemented are still a matter of judgement for the decision maker and there is no obligation to accept these as constituting the very special circumstances required to justify the proposal.
7. In their evidence, the appellants have drawn my attention to other appeal decisions that have been successful in removing conditions which altered or removed permitted development rights of properties in the Green Belt on the basis of preserving its openness. The limitations and conditions of permitted development rights for extensions such as that proposed are not affected by their location in the Green Belt alone. Be that as it may, each proposal is assessed on its own merits, and I am not convinced that the imposition of a condition to remove permitted development rights would be, in itself, unreasonable. However, acceptance of the fallback positions or the requirement to enter into an obligation to remove permitted development rights would not have made the proposal not inappropriate in the assessment against Green Belt guidance in the Framework.
8. In the circumstances of the case, I have found that the removal of the existing permitted development rights for outbuildings, swimming pools, means of enclosure, hardstandings and alterations was not reasonable or necessary in planning terms. However, the appeal could not have been avoided, due to the matter relating to extensions to the replacement dwelling. Therefore, the appellant has not incurred unnecessary or wasted expense in having to submit an appeal.
9. The decision-making process of planning applications necessarily involve matters of planning judgement. In this case the reasons for refusal are detailed and the relevant policies of the development plan are cited. In reaching its decision the Council has had regard to the provisions of the development plan, the Framework and relevant material planning considerations including the views of consultees. In this case I have concluded that the appeal proposal is unacceptable for the same reasons as the Council.
10. To conclude, I have carefully considered the points raised by the applicant. However, I find that unreasonable behaviour as described in the PPG has not been demonstrated. I therefore determine that the costs application should fail, and no award is made.

C McDonagh

INSPECTOR