



Costs Decision

Hearing Held on 1 March 2022

Site visit made on 1 March 2022

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st March 2022

Costs application in relation to Appeal Ref: APP/N0410/W/21/3280468 Lamont House, River Road, Taplow, SL6 0BG

- 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 Rowley for a partial award of costs against Buckinghamshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for demolition of the existing dwelling and erection of a new dwelling with a detached garage building with a swimming pool in the grounds and associated parking and landscaping.
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Decision

1. The application for a partial award of costs against Buckinghamshire Council is allowed in the terms set out below.

The submissions

2. The applicants' case and the Council's response were both made in writing with no further submissions made at the hearing.

The submissions for Mr and Mrs Rowley

3. Regarding the Council's second reason for refusal the applicants contend that the Council erred in treating the garage as a separate building rather than integral to the replacement dwellinghouse. In doing so, the Council incorrectly relied on supporting text to Policy GB10 of the Council's Local Plan that states that outbuildings sited within 5 metres of the dwelling will be included in any calculations of the floorspace as extensions to the dwelling.
4. The applicant refers to the judgment in *Sevenoaks District Council v Secretary of State for Environment & Dawe* [1997] EWHC 1012 (Admin) that found that a garage could be part of a dwelling in the sense that it was a normal domestic adjunct even when detached. The proposed separation distance in this case of 7 metres was not sufficient to prevent the garage from being considered part of the dwelling, and that it should therefore be included in the judgment of whether the proposed replacement dwelling was materially larger than the existing. The applicants also refer to an appeal that was allowed in the Royal Borough of Windsor and Maidenhead (RBWM) in which a proposed garage block was found to be a domestic adjunct, following the *Dawe* judgment. The applicants consider that there is a public interest in consistent decision making in planning.

5. Finally, the applicants refer to the property's permitted development rights in noting that a garage building could be built at the site.

The response by Buckinghamshire Council

6. The Council responds that the appeal decision is not binding precedent on whether a detached building is part of the main house within the Green Belt. The RBWM does not have local policies for when to consider a detached building as part of the main house within the Green Belt. The Council generally considers new buildings to be inappropriate development in the Green Belt in accordance with paragraph 149 of the National Planning Policy Framework. It refers to two appeal decisions in which this approach was supported in relation to proposed outbuildings. The Council's policies provide a consistent approach in considering outbuildings as part of the main house in the Green Belt
7. The Council notes that, had it considered the outbuilding to be part of the main building, then it would have further contributed to the overall development proposal being materially larger than the existing building, strengthening the Council's first reason for refusal relating to the replacement dwellinghouse being inappropriate development.
8. The Council considers that the proposed garage would not be permitted development even if constructed in connection with the existing dwelling. No certificate of lawfulness application has been submitted for such a building. A legitimate fallback position has not been demonstrated. Very special circumstances do not exist in this instance.
9. The Council notes that it advised the applicants of its concerns during the application. It accepted amended plans and the RBWM decision, but these did not overcome the Council's reasons for refusal. Overall, the Council does not consider that it has acted unreasonably so as to cause unnecessary or wasted expense on the part of the applicants.

Reasons

10. National planning practice guidance advises that costs may be awarded against a party who has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
11. It is a matter of planning judgment whether an outbuilding forms part of a dwellinghouse. The supporting text to Policy GB10 states that outbuildings within 5 metres of the dwelling will be included in floorspace calculations. Nevertheless, this is not the same as saying that any building further from the dwelling should not be considered part of the dwelling.
12. I recognise that the Council's position has been supported in appeals. However, the outbuilding in the 2019 appeal was described as remote from the dwelling. In the 2021 appeal the Inspector noted that properties on Park Road have long rear gardens, and that the outbuilding would be positioned at the far end of the garden. While precise distances are not given in either case, the phrasing used indicates a greater degree of separation than would exist in the appeal proposal. In relying on the supporting text to Policy GB10 the Council erred in not forming a judgment on whether the garage was part of the dwelling. In doing so it applied the supporting text to the proposed development in a way that I do not consider can be justified given that the Policy relates to

extensions to dwellings, rather than the replacement of a dwelling as in the appeal proposal.

13. The potential for implementation of a property's permitted development rights must carry some weight when determining planning applications. However, the weight to be given to this possibility is a matter of judgment. While a garage could be constructed on the site, it is not clear that it could be constructed in the location proposed, nor that the possibility was raised by the applicants prior to determination of the planning application. The Council did not therefore act unreasonably in giving the fallback position little weight.
14. The Council would still have refused permission had it considered the garage to form part of the dwelling. The additional volume would have strengthened its position that the dwelling was materially larger than the existing building. Even so, in introducing a second reason for refusal the Council acted unreasonably. This behaviour has resulted in unnecessary or wasted expense on the part of the applicants in having to address this issue.

Costs Order

15. 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 Buckinghamshire Council shall pay to Mr and Mrs Rowley the costs of the appeal proceedings described in the heading of this decision.
16. The applicants are now invited to submit to Buckinghamshire Council, who have also been sent a copy of this decision, details of those costs with a view to reaching agreement as to the amount. If 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 Office is enclosed.

M Chalk

INSPECTOR