
Costs Decision

Site visit made on 20 March 2022

by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 March 2022

Costs application in relation to Appeal Ref: APP/M0655/D/21/3284323 Telford, Chester Road, Higher Walton, Warrington WA4 5LP

- 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 Lee McLaughlin for a full award of costs against Warrington Borough Council.
 - The appeal was against the refusal of planning permission for the erection of a two storey front extension, loft conversion with rear facing dormer and hip to gable alterations to roof at Telford, Chester Road, Warrington WA4 5LP in accordance with the terms of the application, Ref 2021/39172, dated 26 March 2021.
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Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour may be procedural and/or substantive. In this instance, the applicant refers to the Council's alleged unreasonable approach during the processing of the planning application particularly in seeking a planning agreement that would revoke earlier consents through the use of permitted development rights and through a Lawful Development Certificate.
3. The main parties submitted their cases in writing and therefore there is no need to repeat them in full. The applicant seeks a full award of costs. Reference to the costs application being used to send out a clear message to the Council that it should not impose conditions withdrawing permitted development rights are irrelevant factors and have not been taken into consideration in this decision.
4. From my understanding of the costs application, the applicant believes that the Council was wrong in seeking a planning obligation to remove the right of the applicant to implement extensions that were granted under permitted development and a Lawful Development Certificate. It also suggests that the Council is wrong in imposing conditions that withdraws permitted development rights.
5. In rebuttal, the Council explains that the subject planning application was refused on the basis that it considered the size and scale of development to be disproportionate and therefore inappropriate development in Green Belt terms.

6. I would acknowledge that the National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. In addition, the Planning Practice Guidance says that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity. However, it is also true that permitted development rights can in some circumstances permit sizeable extensions that would exceed the disproportionate test in paragraph 149c) of the Framework. I have no doubt that this would be the case here as the applicant has already benefitted from the opportunity to build sizeable extensions as a result of the 2021 approvals.
7. I do not accept that the Council has behaved unreasonably in this case. It explained its concerns during the planning application process and refused the application on legitimate grounds aligned to its views on alleged Green Belt harm. Given the lengths that the applicant himself has taken to use permitted development rights himself in order to be subsequently used as a fall-back position suggests to me that the Council was correct in seeking an obligation (although it did not refuse planning permission on the basis that no Unilateral Undertaking was forthcoming). The Council did not request that I should give consideration to this issue and confined its reasons for refusal to whether the development amounts to inappropriate development in the Green Belt. As will be seen in my appeal decision, I believe that in this case, it is entirely appropriate to impose a condition withdrawing future permitted development opportunities in order to avoid the real prospects of future disproportionate extensions being sought, which would be potentially harmful.

Conclusion

8. For the above reasons, I conclude that the application should be refused.

Gareth W Thomas

INSPECTOR