



Costs Decision

Site visit made on 27 May 2022

by Peter D Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st July 2022

Costs application in relation to Appeal Ref: APP/V0510/D/22/3296004 Mulberry House 44 Mill Lane, Fordham CB7 5NQ

- 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 Hilborn for a full award of costs against East Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for alteration to the building to provide a 'Lifetime Home' with level access into the building and garden, improved circulation widths for wheelchair access, for improved mobility within the dwelling, improved internal heights and increased fenestration to improve headroom and natural daylighting, external insulation with a green roof to the existing rear extension to resolve existing moisture ingress problems with the fabric of the dwelling, provide increased thermal and sound attenuation performance in line with current building regulations.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The appellants have not specifically differentiated in this case but, from the costs application, the appellant raises a number of grounds for costs. Comparing these with the advice in the PPG one of these involves procedural grounds, the others substantive grounds.
4. The procedural ground relates to the appellants' assertion that the Council wrongly interpreted the appellants' Permitted Development (PD) rights under Part 1 of Schedule 2 to the *General Permitted Development Order* (GDPO) in attaching a reason for refusal relating to the rear roof alteration that did not require permission. It then continued to pursue this line of argument through the appeal process.
5. To warrant an award of costs in this regard however the Council must be guilty of providing information that is shown to be manifestly inaccurate or untrue. I considered the matter of the PD rights at some length in my decision letter and, whilst I accept the interpretation is not straightforward, my conclusion is the same as the Council's that the roof alteration to the rear extension was not PD.

Therefore the council was not incorrect in its interpretation and no inaccurate or untrue information has been provided in the appeal.

6. The substantive grounds raised relate principally to whether the Council acted unreasonably in preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and whether the council acted consistently in its decision making.
7. It has been put to me that the basis for the refusal was unfounded as parts of the proposed alterations to the property did not require planning permission and could have proceeded as PD under the GPDO and the cost of having to appeal to establish this point resulted in unnecessary expenditure. However, my decision letter sets out that my conclusion is that the works to the rear extension roof. New entrance and new fenestration do not amount to PD for the reasons I set out there and, given the Council's policies set out in the *East Cambridgeshire Local Plan* (ECLP), the reasons for refusal were valid. Although I have arrived at a different conclusion to the Council with regard to the proposed new southern entrance to the property the Council is entitled to reach its own conclusions regarding the proposal given its policies to preserve or enhance its conservation areas. The fact that I have concluded differently does not of itself mean the Council has acted unreasonably.
8. I have been invited to conclude that because the Council has granted permission elsewhere in the Fordham Conservation Area for what the appellants consider to be similar proposals to those at Mulberry House that it has acted inconsistently against the same policy base and therefore unreasonably. However, each case must be considered on its merits and, in reality, there will be very few cases that are genuinely identical and directly comparable. I set out in my appeal decision letter some substantive differences between the case I was referred to at 4 Carter Street and Mulberry House most noticeably that there were no inward views of the flat roof extension on 4 Carter Street from the public realm and that the full glazed fenestration was in respect of an extension and not extensive reworking of the rear fenestration of the existing building as at Mulberry House.
9. The appellants have raised concerns that they were not given sufficient time or opportunity to consider the reason for refusal and amend their proposals thus possibly averting a refusal and the need for the appeal and that the Council acted inconsistently in giving other applicants greater opportunity in this regard. The PPG makes it clear that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. It appears from the evidence before me that the Council did alert the appellants to the fact that the application was likely to be refused and did allow the appellants a short period to determine what they wished to do. The appellants submitted a lengthy statement in defence of what they believed to be the position regarding PD and other matters. They did not offer to amend or vary the scheme preferring instead to request the Council to review its interpretation of the GDPO. That would have been the opportunity for the appellants to have revisited their scheme or at least indicate that they wished to do so which may have resulted in the Council agreeing time to submit amendments as the appellants claim it did for other applicants. The fact that the appellants chose not to revisit their proposals, and instead defended their position regarding their interpretation of PD and decided to proceed to appeal was their choice and right.

10. I acknowledge that by comparison to the appellants the Council took a considerably longer period to reach their decision on the statement produced by the appellant and requested additional time to do so but, as its interpretation of the GPDO had been challenged, it was reasonable that the Council should carefully review its position. I am not persuaded that the Council acted unreasonably at the application stage.
11. In conclusion, I am satisfied that the Council had a clear basis for its decision, that it considered the situation with regard to the GPDO, had reasons for refusal supported by relevant Development Plan policies and did not act inconsistently.
12. On the strength of the evidence there may have been the opportunity for the Council to have been more positive and proactive in its decision making. However, the extent to which this can be done will also depend on the need for efficiency in decision making and the willingness of applicants to modify designs. I am not persuaded in this instance that, of itself, the Council's response amounted to unreasonable behaviour and, even if it did, the advice in the PPG is clear that there must be both unreasonable behaviour and that the behaviour has resulted in unnecessary or wasted expense in the appeal process.
13. For the reasons above, I am not persuaded that unreasonable behaviour has resulted in unnecessary or wasted expense in the appeal process on this occasion.

P. D. Biggers

INSPECTOR