



Costs Decision

Site visit made on 9 June 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2022

Costs application in relation to Appeal Ref: APP/E2001/W/22/3290120 Land to the north west of Melton Park Villa, Melton Park, Melton HU14 3HP

- 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 Jamie Ashton of Rural Solutions for a full award of costs against East Riding of Yorkshire Council.
 - The appeal was against the refusal of planning permission for a development described as: 'conversion of existing building to a dwelling with associated hard and soft landscaping'.
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Decision

1. The application for a full award of costs is refused. However, a partial award of costs is granted in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.
3. The PPG¹ makes clear that local planning authorities are at risk of a substantive award of costs if they fail to produce evidence to support each reason for refusal on appeal, or if they persist in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
4. The first part of the applicant's case for a full award of costs relates to the third paragraph of the first reason for refusal which states that '*occupiers of the proposed dwelling would be heavily reliant on the use of the private car to meet their essential daily needs, such as the need to access services and facilities. This would be contrary to sub-section A.1. of Policy S4 of the ERLPSD, as well as the NPPF, which seek to promote sustainable patterns of development.*'
5. The applicant alleges that the Council failed to have proper regard to the Inspector's decision² at the appeal site, nor has it produced evidence to substantiate an alternative assessment of the site's sustainability credentials. The Council argues that it concluded differently to the Inspector at the previous

¹ Reference ID: 16-049-20140306

² Ref APP/E2001/W/20/3246480

- appeal at that site due to the site not being previously developed land (the previous case sought to demolish the building and construct a new dwelling).
6. Section A.2. of Policy S4 encourages the re-use of previously developed land (PDL). However, that is just one element of that policy and is separate from the requirement, at A.1., for development to be of an appropriate scale to its location taking into account the need to support sustainable patterns of development (accessibility). Therefore, whilst determining whether or not the proposal is PDL is a factor in assessing compliance with Policy S4, it has limited relevance in the assessment of the accessibility of the location, another, and distinct, component of Policy S4.
 7. The Council also states that it determined the appeal application having regard to a more recent appeal decision³ at Drewton Lane, South Cave for a similar proposal where a different Inspector also considered the application site would not be isolated, like the appeal case, but concluded that day to day needs could not be met on foot due to the poor quality of the access to the site.
 8. Whilst the Council states this decision is more up to date than the decision at the appeal site, it only pre-dates the decision at the appeal site by around a year and both appeals were determined on the basis of the same Local Plan policies. Although the information I have been provided in relation to the Drewton Lane case is limited, it appears from the Inspector's decision on that case that the site is more remote from services than the appeal site, given that the Inspector states the length of the footpath to a farm shop (the only facility referred to) is likely to preclude future occupants from accessing it on foot. Furthermore, there is no mention of the presence of streetlighting or pavement that exists for much of the route to Melton from the appeal site. Whilst the Drewton Lane case is relevant and can be weighed in the balance, on the basis of the evidence before me, I can see no reason why this decision at a different site should carry more weight than a recent case at the same appeal site.
 9. I have been provided with no evidence of any substantial changes in terms of the accessibility of services from the appeal site (such as a school closure or cancellation of a bus service) since the Inspector's decision. The PPG is clear in that persisting with objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable amounts to unreasonable behaviour. For the above reasons, I am not satisfied that the Council provided evidence which substantiated this part of the first reason for refusal.
 10. The second part of the applicant's case relates to the fourth paragraph of the Council's first reason for refusal which reads: *'it is considered that the alterations proposed, and which are necessary to make the building suitable for use as a dwelling, are significant and would go well beyond what could reasonably constitute a conversion. The resultant development is therefore contrary to Policy S4(C) of the ERLPSD and Paragraph 80 of the NPPF'*.
 11. The applicant argues that the proposal was supported by a structural report by a suitably qualified structural engineer. However, I would note that this was a visual assessment and did not assess the effect of the proposed works on the building, including the works to the roof. There was also no method statement detailing the extent of works that were proposed, whilst there was also conflicting evidence as to the extent of the works across the application and

³ APP/E2001/W/21/3270645

appeal, as detailed in my decision. In my view, the extent of the works was sufficiently unclear to justify a precautionary approach and conclude as the Council did. I therefore find no unreasonable behaviour by the Council in this respect. Its position was a legitimate exercise of planning judgement.

12. Reference has been made to a previous approval of the building for offices, storage and distribution, however, there are clearly different requirements for converting a building to an office as opposed to a dwelling and the two schemes are not directly comparable.

Conclusion

13. For the above reasons I do not find that the application for a full award of costs is justified. Nevertheless, I find that some unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. A partial award of costs is therefore justified, relating solely to the Council's first reason for refusal in respect of the issue of the accessibility of the location that had previously been found to be acceptable by an Inspector. The applicant has thus been faced with the unnecessary expense in defending that matter at appeal. Whilst the appellant has not precisely enumerated the expense incurred in that regard, the PPG explains how costs may include 'the time spent by appellant and their representatives' at appeal. Thus, no doubt some costs have arisen.

Costs Order

14. 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 East Riding of Yorkshire Council shall pay to Mr Jamie Ashton of Rural Solutions Limited, the costs of the appeal proceedings described in the header of this decision limited to those costs incurred in responding to the third paragraph of the Council's first reason for refusal with regard to the accessibility of location, such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to East Riding of Yorkshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Martinson

INSPECTOR