
Costs Decision

Site visit made on 17 August 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2022

Costs application in relation to Appeal Ref: APP/W0340/W/22/3291473 Mudhall Cottage, Winterbourne Road, Boxford, Newbury RG20 8AY

- 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 Mauree for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of planning permission for conversion of part of existing detached garage to create annexed accommodation.
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Decision

1. The application for a full award of costs is allowed, in the terms set out below.

Reasons

2. Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Planning Practice Guidance provides a number of potential examples of unreasonable behaviour by Councils, both substantive and procedural.
3. Among other things, these include delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and any other material considerations, acting contrary to, or not following, well-established case law and appeal examples and refusing planning permission on a planning ground capable of being dealt with by a suitably worded condition.
4. The applicants cited case law that established the context within which annexe accommodation should be assessed in terms of dealing with matters of fact and degree. As such, whilst it was open to the Council to reach a conclusion that the proposal should be refused when dealing with matters of fact and degree, I am not clear that they followed case law when conducting their assessment, or even if they did, that their assessment was reasonably comprehensive.
5. Indeed, I agree with the applicants in that no reference to case law was made in the officer's delegated report and no counter logic was presented in response to each of the detailed justifications given by the applicants, which weighed the fact that the proposal had facilities for independent living, with the degree of functional and incidental relationship with the main dwelling.

6. In my mind the Council's assessment was too limited in its scope, dealing principally with the facilities for independent living and the distance from the main dwelling. It did not weigh all of the substantive matters raised by the applicants relating to the functional relationship. This was unreasonable behaviour as it could have had a significant bearing on their decision.
7. Despite the Council's general reference to Planning Practice Guidance¹, I am persuaded by the applicants' position that case law sets out that decisions must be made on what is actually proposed and not what could happen in the future.
8. This is logical, because whether something could happen is a matter for future planning control. If the building is not used as proposed, or if there is a material change of use in the future to create a separate dwelling, then a separate grant of planning permission would be required, and the building would be at risk of enforcement action if such permission had not been granted.
9. Furthermore, the Council gave weight to a guidance document that did not seem to relate to the proposal at hand. Altogether, these amount to inaccurate assertions that was unreasonable behaviour and would have had further significant bearing on their decision.
10. Altogether, I am satisfied that the Council would have come to a different conclusion, like the conclusion reached in my appeal decision and granted planning permission, had they comprehensively engaged with the fact and degree arguments presented to them in accordance with case law.
11. Consequently, the Council's unreasonable behaviour has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan and any other material considerations. It follows that the appeal could have been avoided and the expenses incurred by the applicants were unnecessary.
12. Whilst I acknowledge the parties' contentions in relation to other appeals and applications, it is very difficult to draw direct comparisons with the proposal in this case and determine that they are sufficiently similar. Not least because the fact and degree arguments are very specific to each case and are not in front of me here.
13. I cannot conclude that the Council refused planning permission on a planning ground capable of being dealt with by a suitably worded condition. Consistent with the reasoning in my appeal decision, there is no evidence presented in this case demonstrating that a condition would be necessary. This is due to planning controls that would be available to the Council in the event the proposal for an annexe was not implemented as approved.
14. Overall, whilst not all of the applicants' grounds for costs have been made out, a sufficient number of grounds have been, and this enables me to conclude that the Council demonstrated unreasonable behaviour resulting in unnecessary or wasted expense at appeal. Consequently, a full award of costs is justified.

¹ Where no specific citation is provided in any event

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 West Berkshire Council shall pay to Mr and Mrs Mauree the costs of the appeal proceedings described in the heading of this decision.
16. The applicants are now invited to submit to the 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. In the event that the parties cannot agree on the amount, such costs are to be assessed in the Senior Courts Costs Office.

Conclusion

17. For the reasons given, the application for a full award of costs is allowed.

Liam Page

INSPECTOR