
Costs Decision

Site visit made on 28 December 2022

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Costs application in relation to Appeal Ref: APP/P1805/D/21/3288648 Westlodge, Thicknall Lane, Hagley DY9 0HJ

- 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 Dominic Russell for a full award of costs against Bromsgrove District Council.
 - The appeal was against the refusal of planning permission for single storey rear extension.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant has alleged that the Council behaved unreasonably by relying upon vague, generalised and inaccurate assertions about the scheme's impact as a result of a failure to properly consider a fallback position, leading to a lack of objective analysis. Further, it is the applicant's stance that the Council prevented and delayed development that should clearly have been permitted.
4. The fallback position put forward by the applicant centres upon what could be erected without planning permission under permitted development rights and is supported by prior approval decisions¹ with respect to larger home extensions. Whilst there is no specific reference to (a) fallback position(s) within any of the Council's reasons for refusing planning permission, there is related commentary contained within the 'Planning History' and 'Very Special Circumstances' sections of its delegated report. Importantly, it has been correctly identified by the Council that the extant consent (granted at appeal) is for a smaller extension when compared to that now under consideration.
5. As such, and despite the lack of any explicit reference to fallback arguments in the 'Character and Appearance in relation to Heritage Assets' section of the Council's delegated report, I cannot find that a lack of objective analysis led to reasons for refusal being imposing unreasonably. This is notwithstanding the successful outcome of the planning appeal that is the subject of this application.

¹ Ref: APP/P1805/D/20/3265582 and 22/00303/HHPRIO

6. Moreover, when compared to the fallback position promoted, it could be reasonably argued that a scheme of larger footprint and modified positioning would have differing implications for the character and appearance of the host dwelling and for the significance of relevant designated and non-designated heritage assets.
7. Further, it was not unreasonable for the Council to identify a loss of Green Belt openness or to consider that very special circumstances had not been demonstrated to justify inappropriate development. This is despite an erroneous classification of the site as not previously developed land (contrary to a relevant definition contained within the National Planning Policy Framework (July 2021)) and the potential that would have availed for the Council to withdraw the future use of permitted development rights by way of planning condition.
8. For the reasons set out above, development was not prevented or delayed that should clearly have been permitted and, as such, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. Thus, having had regard to all matters raised, an award of costs is not justified.

Andrew Smith

INSPECTOR