



Costs Decision

Site visit made on 20 December 2022

by M J Francis BA (Hons) MA MSc MCIFA

an Inspector appointed by the Secretary of State

Decision date: 09 February 2023

Costs application in relation to Appeal Ref: APP/X1355/W/22/3309292 Woodside, Sleetburn Lane, Langley Moor, Durham DH7 8LQ

- 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 Liam Timmins for a partial award of costs against Durham County Council.
 - The appeal was against the refusal of planning permission for the redevelopment of existing stables to form one 2-bedroom dwelling.
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Decision

1. The application for a partial 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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. The applicant has stated that the Council made incorrect assertions in relation to the detrimental impact that the proposal would have on future occupiers and residents of the host dwelling in relation to a loss of privacy and being overbearing.
4. The applicant considers that as the proposal replaces an existing building of the same dimensions, which was considered acceptable when permission was given for its use as a holiday let¹, the Council's assessment is flawed. Furthermore, they consider that the use of separation distances when both buildings are single storey; and that as there are no windows in either the host dwelling or the new dwelling which would directly or indirectly overlook either of the garden spaces, that there would be no loss of privacy between the two properties. As such they consider that as there is no loss of privacy, and therefore no demonstrable harm, refusal reason 3 is not warranted. This they consider amounts to unreasonable behaviour warranting a partial award of costs.

¹ DM/21/02439/FPA Erection of extension to rear of dwelling and change of use from stable block to holiday let (amended description)

5. A planning application for a change of use of a building, as opposed to a new dwelling, requires different policies to be used in the assessment. The previous use of the building as a holiday let was considered acceptable and did not result in concerns regarding the living conditions of future occupiers and existing residents. This is because the building would be in the same ownership as the host dwellings. Therefore, the occupiers of the host dwelling could manage the use of the garden space and any privacy concerns, as they retained control of the site.
6. However, once the building becomes an independent unit, that control would not be possible. It remains reasonable, therefore, for the Council when considering a different use for the same site, to make an assessment in relation to distances between the properties, the position of windows and whether two dwellings close together would affect the privacy of both dwellings, particularly in the use of the private garden space to the rear.
7. Overall, whilst I appreciate that the applicant does not agree with the Council's consideration and opinions relating to the effect of the appeal proposal, the issues at the heart of the appeal involve a degree of subjectivity. Given their conclusions, which I am satisfied were properly reached overall, planning permission should not clearly have been granted and an appeal was therefore inevitable.
8. In this case the Council was exercising its normal powers and they found that this part of the proposal was contrary to the development plan which they substantiated with a stated reason for refusal.
9. I therefore find that unreasonable behaviour, resulting in unnecessary or wasted expense as described in the PPG, has not been demonstrated.

M J Francis

INSPECTOR