
Costs Decision

Site visit made on 12 December 2022

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 28th February 2023

Costs application in relation to Appeal Ref: APP/P2365/D/22/3306374 520 Liverpool Road, Rufford, Ormskirk, Lancashire L40 1SQ

- 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 Robert and Jennifer Evans for a full award of costs against West Lancashire Borough Council.
 - The appeal was against the refusal of planning permission for replacement and repair of existing roof with altered profile (to rear only), extended dormer to rear and 3no. pitched roof dormers to front. Removal of 1st floor windows to side elevations, removal of rear conservatory, reduction in windows to side elevations at ground floor. Enclose space between current extensions to create a plant room for a sustainable heating system.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. Applications for costs should clearly demonstrate how alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The applicants consider that it was unreasonable of the Council to refuse the application when they had taken on board comments made in pre-application advice (Ref PRE/2021/0476/HOU) and the subsequent refused application (Ref 2022/0205/FUL). In this regard, the amended appeal scheme did overcome the Council's concerns in relation to design and appearance and the application subject of the appeal was not refused on grounds relating to these matters. However, the amendments were not sufficient to address concerns in relation to the Green Belt.
4. The pre-application advice is not directly applicable to the appeal scheme. In any case, the PPG is clear that pre-application advice is not binding and it cannot pre-empt the democratic decision making process in the event that an application is made. It was not unreasonable of the Council to determine the application on its own merits, taking into account the development plan and the National Planning Policy Framework. As can be seen from my appeal decision, I also found that the appeal scheme would be inappropriate development in the Green Belt and I dismissed the appeal accordingly. Therefore, the Council's refusal did not delay or prevent development that should clearly have been permitted.

5. The applicants also consider that it was unreasonable of the Council to introduce harm to protected species as a reason for refusal when the issue was not raised in the pre-application advice, or in relation to the earlier refused application, and at a time of year when the concerns could not be addressed.
6. I understand that applicants' frustration that the issue was not raised previously or at an earlier stage in the processing of the application. However, taking into account the advice of the local bat group consultee, the Council did not behave unreasonably in determining the application taking into account the development plan and its legal duties in relation to protected species.
7. The applicants' note that the Council consulted the local bat group and not its statutory ecological advisor. However, the Government guidance¹ is clear that while Natural England is the statutory consultee for proposals that affect protected sites, it will only provide advice if consulted on other cases, including those that might affect protected species, in exceptional circumstances. It was not therefore unreasonable of the Council to seek advice from a local consultee.
8. The application subject of the appeal was refused at the end of the summer bat emergence survey season. However, while an emergence survey could not be submitted in support of the application or the appeal, the Government's standing advice for protected species explains that preliminary bat roost assessments can be carried out at any time of year.
9. The application was refused primarily on grounds that it would be inappropriate development in the Green Belt. Even if the applicants had submitted a bat survey with the application, it would still have been refused and the appeal could not have been avoided. As no information in the form of a bat roost assessment has been provided with the appeal, the applicants do not have appear to have incurred expense in the appeal process in relation to this main issue. Therefore, even the Council had behaved unreasonably by failing to raise concerns about bats in a timely manner, it did not result in unnecessary or wasted expense in the appeal process.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated.
11. Therefore, a full award of costs is not justified.

Sarah Manchester

INSPECTOR

¹ <https://www.gov.uk/guidance/protected-species-how-to-review-planning-applications#consult-natural-england-or-the-environment-agency>