



Costs Decisions

Site visit made on 24 January 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Costs application in relation to Appeal A Ref: APP/H1515/W/22/3294380 Meadow Farm, Beggar Hill, Fryerning CM4 0PG

- 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 Michael Merrigan for a full award of costs against Brentwood Borough Council.
 - The appeal was against the refusal of planning permission for 'demolition and reconstruction of storage barn (Building C), B8 and change of use to provide 1No. self-contained dwellinghouse, C3'.
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Costs application in relation to Appeal B Ref: APP/H1515/W/22/3294381 Meadow Farm, Beggar Hill, Fryerning CM4 0PG

- 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 Michael Merrigan for a full award of costs against Brentwood Borough Council.
 - The appeal was against the refusal of planning permission for 'change of use of stables building (Building E), B8 to provide 1No. self-contained dwellinghouse, C3'.
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Decision

1. The applications for award of costs are partially allowed, in the terms set out below.

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. It adds that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, such as preventing or delaying development that should clearly be permitted.
3. Both costs applications contend that the Council based its decision on a policy which was not applicable to the proposed development, namely Policy GB8 of the Brentwood Replacement Local Plan 2005 (BRLP). The applications further contend that the Council incorrectly assessed, and therefore significantly underestimated, the proposed extent of amenity space. The implication is that the appeals could have been avoided, had the Council behaved differently in these respects.

4. The BRLP has been superseded by the Brentwood Local Plan 2016-2033, which was adopted in March 2022 shortly after the applications were determined. I have therefore considered the appeals based on the adopted development plan. However, since the BRLP was the adopted development plan at the time of its decision, the Council's application of its policies is relevant to the costs applications.
5. Policy GB8 was titled Extensions to Gardens and stated that applications to allow extensions of a domestic curtilage into the Green Belt would not be allowed. The supporting text alluded to extension of existing gardens or domestic curtilages, identifying that this can be harmful as a result of further urbanisation and change from rural to suburban character, contrary to the aims of the Green Belt.
6. The Council concluded that both proposed developments complied with paragraph 149g of the National Planning Policy Framework (the Framework), in relation to redevelopment of previously developed land in the Green Belt. It follows that the application sites had been judged to comply within the definition of previously developed land in Annex 2 of the Framework. This implies that the Council considered the land in question to fall within the curtilage of the existing buildings. The proposals would not result in an extension to these existing curtilages, with the proposed amenity spaces being similarly positioned tightly around the buildings, maintaining a close relationship between the amenity space and the building.
7. With regard to the measurement of proposed amenity space, the Council's Officer Report assessed the proposed areas against Appendix 1 of the BRLP. This is consistent with reference in the reasons for refusal to Policy CP1(ii) of the BRLP, the supporting text to which identifies Appendix 1 as setting out key principles relevant to proposed residential development. Policy CP1(ii) also requires that proposed development does not have an unacceptable detrimental impact on the general amenities of future occupiers. While the extent of amenity space is not specifically listed as a consideration in Policy CP1(ii), the reference to 'general amenities' can reasonably be interpreted as encompassing this consideration.
8. The plans submitted with the applications included limited detail regarding the proposed layout of private amenity spaces. While additional explanation has been provided with the appeals, this was not available to the Council at the time of its decisions. Although I have reached a different view, based on the more recently adopted Policy HP06 of the March 2022 Local Plan, I am satisfied that the Council had rational reasons for their assessment of the extent of satisfactory private amenity space, based on the adopted policies at that time and the information before them.
9. As such, the Council did not act unreasonably with regard to its interpretation of the proposed private amenity space, or the planning judgement reached as to compliance with Policy CP1(ii) or Appendix 1 of the BRLP. Therefore, there is no clear evidence that the appeals could have been avoided and full awards of costs are not justified.
10. However, Sections 3.0 and 4.0 of the appellant's Statements of Case specifically address the relevance of Policy GB8, incorporating the outcome of research on comparative cases. This indicates that unnecessary expense has been incurred to a limited extent, restricted to the cost of time expended

undertaking research on comparative cases and preparing this aspect of the case.

11. In these circumstances, since the applicant has been put to a limited amount of additional expense in countering the Council's position, partial awards of costs are justified.

Conclusion

12. For the reasons set out above, I find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the Planning Practice Guidance has been demonstrated and that partial awards of costs are justified.

Costs Order

13. 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 Brentwood Borough Council shall pay to Michael Merrigan the costs of the appeal proceedings described in the heading of these decisions, limited to those costs incurred in contesting the element of the Council's reasons for refusal which concerned alleged conflict with Policy GB8 of the Brentwood Replacement Local Plan 2005.
14. The applicant is 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, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.