



Costs Decision

Site visit made on 25 April 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2023

Costs application in relation to Appeal Ref: APP/B2355/W/22/3310976 Woodcliffe, Horncliffe, Bury Road, Rawtenstall BB4 6JS

- 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 Henry Shepherd for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of planning permission for the change of use, conversion and extension of outbuilding to 1 dwelling.
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Decision

1. The application for a full award of costs is refused. However, a partial award of costs is granted in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. In essence, the applicant considers that the Council behaved unreasonably in terms of (i) being inconsistent when considering the character and appearance of the proposal, (ii) not properly assessing whether the proposal was inappropriate development in the Green Belt, (iii) persisting in objections to the proposal which an Inspector has previously indicated to be acceptable, and (iv) preventing development that clearly should have been permitted having regard to the development plan, national policy and other material considerations.
4. The Council's first reason for refusal comprises of several elements. The Council refer to the building only in the officer report which states that 'it would be difficult to sustain an argument that the conversion/extension works would harm the character of the host building'. This is not the same as the appeal site as a whole. Although the officer report goes on to explain that, for three other reasons, the proposal would be harmful, the concept of openness appears to be conflated with character and appearance. Nevertheless, it does not appear unreasonable of the Council to consider as a separate element of the proposal, that the introduction of parking, other domestic paraphernalia and potential loss of tree screening would not respect the local context, distinctiveness or character and appearance of the area.
5. The Council indicates the proposed alterations and extension to the building would be difficult to object to on design grounds. The Council has failed to provide details of why the design of the proposal as a whole was unacceptable, particularly as no other structure was proposed within the associated outdoor

space and the ordinary meaning of design is generally applied to a building or structure.

6. In terms of the Green Belt, the Council did not properly assess the proposal having regard to the Framework or any relevant development plan policy. Conflict with section 13 of the Framework is stated on the decision notice; however, there is no objective assessment of whether the proposal constituted inappropriate development in the Green Belt, even though this was a main issue in the previous appeal decision and was addressed in the applicant's planning application submission. This constitutes unreasonable behaviour contrary to the guidance in the Framework and the PPG.
7. The second reason for refusal in the Council's decision notice relates to conflict with paragraph 80 of the National Planning Policy Framework (the Framework) as it would create an isolated home in the countryside. The Council set out in the officer report that the proposal would fail to satisfy the requirements of paragraph 80 of the Framework in that it would not comply with the 5 criterion listed. Although the report goes on to acknowledge the previous appeal decision¹ it concludes that the principle of the proposed development would be unacceptable. However, the previous appeal decision clearly sets out the reasons why the proposal would not be an isolated home in the countryside.
8. In such circumstances, it is necessary that the Council provide a reasonable explanation and justification as to why they have taken a different view and continued to object to elements of the scheme where a previous Inspector found no harm. I acknowledge this reason for refusal was ultimately withdrawn by the Council. Nevertheless, this was not until the applicant had submitted an appeal. Therefore, the Council acted unreasonably on this matter.
9. In terms of whether the unreasonable behaviour has prevented development that clearly should have been permitted, my appeal decision explains why I consider the development should not be permitted. It follows that the Council has been reasonable in objecting to the proposal in respect of the effect of the proposal upon the openness of the Green Belt and the character and appearance of the area. As such, it has not refused planning permission for a development that clearly should have been allowed.
10. Turning to the matter of unnecessary or wasted expense, I have found the Council acted unreasonably with regard to citing design in the first reason for refusal without clear justification and failed to undertake a Green Belt assessment. However, the applicant would still have been required to defend the first reason for refusal having regard to the effect on the openness of the Green Belt and the character and appearance of the area. Consequently, I am satisfied that this is not unreasonable behaviour that has led to unnecessary or wasted expense in defending the first reason for refusal.
11. Notwithstanding my above assessment, the unreasonable behaviour resulting in a reason for refusal having regard to elements of the proposal which an Inspector has previously indicated to be acceptable, has resulted in unnecessary work for the appellant during the appeal process. I note the Council state 'they would be prepared to settle an appropriate cost claim in relation to this matter'. A partial award of costs is therefore justified to cover the appellant's expense in contesting the Council's second reason for refusal.

¹ APP/B2355/W/21/3283510

Costs Order

12. In exercise of my 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 powers enabling me in that behalf, IT IS HEREBY ORDERED that Rossendale Borough Council shall pay to Mr Henry Shepherd the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with the second reason for refusal. Such costs are to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Rossendale Borough 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.

A Veevers

INSPECTOR