



Costs Decision

Site visit made on 22 May 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2023

Costs application in relation to Appeal Ref: APP/U1430/W/22/3297787 Haselden Farm, Battle Road, Dallington, East Sussex TN21 9LG

- 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 Richard and Dianne Mower for a full award of costs against Rother District Council.
 - The appeal was against the refusal of planning permission for the change of use of stables to residential annexe, and sewage treatment plant.
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Decision

1. The application for a full award of costs is allowed.

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. The PPG states 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, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals.
4. Examples of behaviour that may give rise to a substantive award of costs include where a local planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; where similar cases have not been determined in a consistent manner, and where planning permission has been refused on a planning ground capable of being dealt with by a condition.
5. The applicants' claim that the Council unreasonably considered the proposal as for a single dwellinghouse despite it being clearly presented as ancillary annexe accommodation to the main dwelling. In so doing, the scope of its considerations was unreasonably broad, and it judged the annexe against the floor space and outdoor amenity space standards applicable to dwellinghouses. This resulted in the refusal of planning permission on the grounds of harm to the living conditions of the occupiers.
6. The applicants' case is that had the Council confined its considerations to the development applied for, as it had done so in permitting other annexes that included bathrooms and kitchens, then permission should have been granted. The applicants point out that the Council found the proposal to comply with the sequential approach to annexes set out in Policy DHG10 of the Rother District

Council Development and Site Allocations Local Plan (Adopted December 2019) (LP). Furthermore, the Council did not consider whether occupancy of the annexe could be controlled by condition to avoid unlawful occupation as an independent dwellinghouse, as it was directed to by Policy DHG10, and as it had done in other permissions for annexe developments.

7. The applicants' planning application was made on the Householder Application form and was clearly described as seeking permission for the annexe. I understand why the Council may consider the proposal in front of it may not be an annexe. However, the evidence submitted by the applicants did include supporting information describing the physical and functional relationship between the annexe and the main dwellinghouse at the time of the application. In the face of this evidence, I find that the Council, in judging the annexe to be a dwellinghouse, took an overly narrow approach that focussed primarily on the facilities within the building and its size. The Council did not properly consider whether occupancy of the annexe could be controlled to avoid unlawful occupation as an independent dwellinghouse.
8. The Council defines a residential annexe in paragraph 4.102 of the Rother District Council Development and Site Allocations Local Plan (Adopted December 2019) (LP), as accommodation ancillary to the main dwelling within the residential curtilage that provides additional semi-independent accommodation for members of the same family, often older family members who may need assistance with health care. Paragraph 4.105 of the LP states that the size of the annexe will need to be demonstrated to be that necessary to meet the intended purpose, normally with a single bedroom only, and demonstrate that it will be capable of being incorporated into the use of the dwelling in the longer term.
9. I find no cogent explanation in the Council's case to justify why the facilities within the annexe and why the size of the annexe, which does not meet nationally described space standards for a dwellinghouse and has one bedroom, would prevent it from functioning as semi-independent accommodation for members of the same family and meeting the Council's definition of an annexe. I have read nothing in the definition that disqualifies buildings with kitchens or bathrooms from being capable of functioning as ancillary annexe accommodation. The applicants have provided examples of annexes in the Council's area that were permitted with such facilities.
10. The Council's explanation in Paragraph 5.3 of its Statement of Case, that the annexe "*in terms of.....distance from the main dwelling do reflect the concerns of the council and the similarities of the proposal to the creation of a new independent residential dwelling*", directly contradicts the Council's conclusion that the annexe meets the sequential approach in criterion (ii) of Policy DHG10, which supports the conversion of an existing outbuilding within the residential curtilage that is located in close proximity to the dwelling.
11. In determining the planning application, I find that the Council did not weigh all the substantive matters raised by the applicants relating to the functional relationship between occupation of the annexe and the main dwellinghouse. Furthermore, the Council unreasonably decided that just because the annexe could function as a dwellinghouse, that it necessarily would function as a dwellinghouse, and there is little evidence before me to indicate that it considered whether occupancy of the annexe could be controlled by condition

to avoid unlawful occupation as an independent dwellinghouse, as it was directed to by Policy DHG10.

12. Whilst a costs award does not necessarily follow the appeal decision, it is relevant in this case that the appeal was successful. Had the Council properly confined itself to considering the application as seeking planning permission for ancillary annexe accommodation, rather than as a separate dwellinghouse, there was a strong probability that planning permission would have been granted, thus avoiding the appeal and the applicants' expense of pursuing it. The Council's explanation that the dispute between the main parties is a matter of planning judgement does not adequately justify its behaviour.
13. It follows that the Council's unreasonable behaviour prevented development which should have been permitted with a condition. In doing so, the applicants have been put to unnecessary expense and their claim for a full award of costs is justified.

Conclusion

14. Based on the evidence before me and for the reasons I have given, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated. A full award of costs is therefore justified.

Costs Order

15. 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 Rother District Council shall pay to Mr and Mrs Richard and Dianne Mower, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicants are now invited to submit to Rother District 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.

G Sylvester

INSPECTOR