



Costs Decision

Site visit made on 15 August 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2023

Costs application in relation to Appeal Ref: APP/T3725/D/23/3322116 Fernwood Lodge, Fernwood Farm, Rouncil Lane, Beausale, Kenilworth CV8 1NN

- 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 Iain Date for a full award of costs against Warwick District Council.
 - The appeal was against the refusal of planning permission for side dormer for loft conversion.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance 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 appellant submits that the Council has behaved unreasonably by failing to acknowledge a fallback scheme which was referred to in the planning application and which should have been a material consideration.
4. In response, the Council states that it did not consider the fallback scheme to be relevant enough to expressly address it in its assessment.
5. However, as can be seen from my Appeal Decision, I have expressly considered the fallback scheme of an alternative dormer window. Although the lawful development certificate has been referred to by the Council, this is not within the context of considering this as a fallback scheme. The existence of a valid fallback is an important consideration in assessing this proposal, and the failure of the Council to address this represents unreasonable behaviour. Although planning reports may not be required to contain every single consideration, the existence of a fallback scheme is an important matter, and the Council should have addressed this.
6. That said, the Council also refers to the fact that the granting of planning permission for the appeal proposal as submitted would not prevent the erection of the alternative dormer under permitted development rights. I have also concluded that the fallback scheme does not weigh in favour of the appeal as it could be implemented separately from the appeal proposal and I have

dismissed the appeal. On that basis, I am not persuaded that the Council's unreasonable behaviour in its consideration of the application has led to an appeal which could otherwise have been avoided. The appellant has therefore not been put to unnecessary or wasted expense in progressing the appeal.

7. However, the appellant also refers to the preparation and submission of the claim for costs. Had the Council considered the planning application appropriately, then the costs claim would not have been required. The Council's unreasonable behaviour has therefore led to the appellant incurring unnecessary or wasted expense in progressing the claim for costs. Having regard to the provisions of the Guidance, a partial award of costs is therefore justified.

Costs Order

8. 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 Warwick District Council shall pay to Mr Iain Date, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing and submitting the costs claim; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The appellant is now invited to submit to Warwick 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.

David Cross

INSPECTOR