



Costs Decision

Site visit made on 30 August 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Costs application in relation to Appeal Ref: APP/H2265/D/22/3308038 Woodruff, Mill Lane, Basted, Sevenoaks TN15 8PR

- 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 & Mrs J Penn for a full award of costs against Tonbridge and Malling Borough Council.
 - The appeal was against the refusal of planning permission for erection of single storey side extension with glazing and bi fold doors to be used as dining/entertaining space.
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Decision

1. The application for an award of costs is allowed 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. The appellant submits that the Council has acted unreasonably as it demonstrated a lack of co-operation with the appellant, did not determine the case in a manner consistent with a previous appeal decision, and did not follow well-established case law through having regard to the submitted Unilateral Undertaking (UU) and the very special circumstances that exist.
4. The appeal proposal is very similar to a scheme that was the subject of a previous appeal decision¹ in which the Inspector found that the proposed extension would be inappropriate development and would have a small adverse impact on Green Belt openness. The Inspector dismissed the appeal due to the scheme's conflict with the development and national policy.
5. The Inspector found that planning conditions could not be reasonably used to restrict development of an outbuilding approved through a certificate of lawful development, and thus this fallback position carried less weight in their decision, concluding that the very special circumstances necessary to justify the development in the Green Belt did not exist. Whilst the applicant considers the Inspector offered a clear route forward through the submission of a UU, I do not consider that the previous Inspector made such a recommendation.
6. The appellant has provided transcripts of correspondence with the Council after the decision notice was issued. The submitted evidence does not therefore

¹ APP/H2265/D/21/3284465

demonstrate that the Council failed to cooperate appropriately prior to determining the planning application.

7. As indicated in its delegated report, the Council accepts that the size and positioning of the outbuilding approved through the certificate of lawful development would cause greater harm to Green Belt openness than the appeal proposal.
8. However, the Council does not appear to have considered adequately the planning obligations contained in the UU as a mechanism to restrict the construction of the outbuilding, thus ensuring harm to the Green Belt is minimised.
9. The Council's main rebuttal is that it is not a signatory to the UU. However, in law, this would have no bearing on the robustness or effectiveness of those planning obligations.
10. On this basis, the Council failed to have sufficient regard to whether any other material consideration, namely the effect of the UU, would result in very special circumstances in respect of the fallback position arising from the certificate of lawful development, which the Council appears to accept would be more harmful to Green Belt openness than the proposed development.
11. The second appeal, and the costs associated with it, could therefore have been avoided altogether. Therefore, the Council has acted unreasonably and this behaviour has resulted in unnecessary or wasted expense and a full award of costs is therefore warranted.

Costs Order

12. 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 Tonbridge and Malling Borough Council shall pay to Mr & Mrs J Penn, the costs of the appeal proceedings described in the heading of this decision; such costs are to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Tonbridge and Malling 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.

E Dade

INSPECTOR