The Planning Inspectorate

Costs Decision

Site visit made on 9 May 2023

by Stephen Wilkinson BA BPl DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Cost application in relation to Appeal Ref: APP/J1535/W/22/3308638
Willows End, Cumley Road, Toot Hill, Ongar, CM5 9SJ

- 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 Paul Farthing for a full award of costs against Epping Forest District Council.
- The appeal was against the refusal of planning permission for the demolition of an existing dwelling and construction of a chalet style property with a basement as a replacement.

Decision

1. The application for an award of costs is refused.

Reasons

The Applicants case.

2. In summary the claim for costs is made on the grounds that the Council has acted unreasonably by being inconsistent in its approach to decision making on applications for the redevelopment or extension of the existing dwelling.

3. The Council has behaved unreasonably resulting in the appellant incurring the costs of this appeal.

The Council's response

4. In summary the Council's response states that it has been consistent in its approach to the decisions it has taken with regard to this site since 2020.

5. The Council has not behaved unreasonably.

Reasons

6. Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of an appeal, costs may be only awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

7. The appeal site has had a short planning history involving applications submitted through both Prior Approval and an application seeking alterations to an extant permission since 2020. The decision letters and officer's delegated reports relating to these applications are not before me.

8. I understand that these schemes have been reduced in scale due to impacts on the openness of the Green Belt and for some of these applications this has been a reason for refusal.

9. However, I understand that the difference between the parties relating to this appeal is that the size of the proposed basement could be used as habitable space rather than just as storage i.e. effectively creating another storey. This matter alone distinguishes the Council's decision to grant permission for a similar scheme (EPF/0941/21) from its other decisions[1].

10. So whilst the proposed basement in this case maybe smaller than that of a previous scheme the Council considers that it is still unacceptably large and could still be used as habitable space leading to the creation of a two and a half storey dwelling. Although in my main decision I allow the appeal I accept that there is a rational flow to the Council's reason for refusal which is consistent with its recent decisions on this site.

11. In the exercise of its discretion on these applications and based on the evidence before me I cannot agree that the Council has acted unreasonably in this case.

Conclusions

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance has not been demonstrated.

Stephen Wilkinson

INSPECTOR

[1] EPF/2410/21, EPF/0202/21 and EPF/1280/21