



Costs Decision

Site visit made on 1 August 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Costs application in relation to Appeal Ref: APP/G2245/D/22/3311964 Oakfield Farm, Main Road, Edenbridge, Kent TN8 6SP

- 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 Adam Skinner for a full award of costs against Sevenoaks District Council.
 - The appeal was against the refusal of planning permission for development described as 'Demolition of existing out-building and erection of new out-building along with new boundary fence'.
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Decision

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

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 goes on to provide examples of unreasonable behaviour by local planning authorities, which include amongst other things preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and acting contrary to, or not following, well-established case law.
4. The costs application contends that the Council behaved unreasonably by failing to have regard to a fallback position that had been brought to its attention. The allegation is that the fallback position should have been recognised by Council officers as being a material consideration based on case law, notably *Mansell v Tonbridge and Malling Borough Council*¹. Lack of its consideration by the Council is claimed to have led to an unreasonable decision to refuse planning permission. Had the fallback position been properly considered, the appellant considers that planning permission would have been granted and the appeal could have been avoided.
5. The Council has had the opportunity to respond to the application for an award of costs but no response has been provided.
6. Applications for costs are limited to those costs incurred during the appeal process. Therefore, while I have had regard to relevant points raised about engagement between the appellant and the Council prior to determination of

¹ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

the application, any costs associated with the planning application process itself fall outside the scope of this application.

7. The fallback position in this case is based on the existence of permitted development rights as defined in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Fuller details are set out in the appeal decision.
8. Evidence has been provided that the implications of permitted development rights for buildings under Schedule 2, Part 1, Class E of the GPDO were highlighted to the Council before the application was determined. I have been provided with copies of email correspondence between the appellant's agent and a Council officer, in which the agent spelled out the limited differential in height between the outbuilding as part constructed and the maximum height permitted under Class E. The Planning Statement submitted to the Council also mentioned permitted development, but only briefly and without highlighting the comparative height difference.
9. Neither the planning application documents nor other correspondence which has been provided to me point out any implications of permitted development rights for fences. Furthermore, both the application documents and the appellant's appeal statement explicitly confirm that the proposed fence is part of the development for which planning permission was sought. Nevertheless, it would not be unreasonable for the appellant to assume that Council officers would be aware of the provisions of the GPDO in general terms.
10. The Officer Report does not include any reference to permitted development rights under the GPDO or their implications in terms of a potential fallback position. Given the above, this was a readily identifiable material consideration, which should have contributed to the Council's decision-making process. Therefore, its omission amounts to unreasonable behaviour on the part of the Council.
11. However, for an award of costs to be granted, the PPG requires that any unreasonable behaviour should have resulted in unnecessary or wasted expense in the appeal process. In the case of the outbuilding, the proposed and part-constructed development does exceed the height limit imposed by Class E, so the building is not permitted development as defined in the GPDO. It would also be inappropriate development in the Green Belt, for the reasons set out in the appeal decision.
12. The conclusions which I have reached regarding the weight which should be attached to the Green Belt harm, the associated conflict with the development plan, the fallback position, and other material considerations are a matter of planning judgement. There is no certainty that the Council would have attributed similar weight to each material consideration, had they given clearer consideration to the fallback position. As such, it has not been clearly demonstrated that consideration of the fallback position would have led the Council to a different decision, such that the appeal could have been avoided.
13. The expediency or otherwise of taking enforcement action is a separate matter, since the appeal relates to refusal of the planning application and not to any related enforcement action.

14. Consideration of the provisions of the GPDO at an earlier stage may have led to the inclusion of the fence within the planning application being queried by the Council. To that extent, this element of the appeal could potentially have been avoided. However, there is very limited evidence within the appeal submission regarding the fence and therefore any effect on the cost of the appeal process would have been negligible. As such, there is no substantive evidence that inclusion of the fence within the Council's decision led to unnecessary or wasted expense in the appeal process and there is no justification for a partial or full award of costs.

Conclusion

15. For the reasons set out above I conclude that, whilst the Council exhibited unreasonable behaviour in some respects in terms of the PPG, I find that wasted or unnecessary expense has not been demonstrated. I conclude therefore, that the application for an award of costs should be refused.

Jane Smith

INSPECTOR