



Costs Decision

Site visit made on 8 August 2023

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2023

Costs application in relation to Appeal Ref: APP/M2270/W/22/3309540 1 Birch Close, Royal Tunbridge Wells, Kent TN2 3TJ

- 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 S Andrews for a full award of costs against Tunbridge Wells Borough Council.
 - The appeal was against the refusal of planning permission for the demolition of an existing outbuilding and the erection of 1no. dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and that behaviour has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application is seeking to recover the full costs incurred in the appeal process. The applicant considers that the Council behaved unreasonably as it: prevented development which should clearly be permitted; put forward vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis; did not determine cases in a consistent manner; and failed to apply well understood planning policy in its determination of the application.
4. The reason for refusal identifies conflict with two development plan policies and the Council's Planning Officer's Report (the report) appraises the potential impacts of the proposal. I agree that there would be conflicts with these policies in respect of the impacts of the proposal on character and appearance. Although the report does not specifically refer to the extension at 10 Orchard Close, the subsection on visual amenity provides an objective analysis outlining the rationale for refusing the application.
5. In terms of not determining cases in a consistent manner, the applicant cites the approval of the extension at 10 Orchard Close (ref 14/501055/FULL). However, the Council outlines the differences between the development at 10 Orchard Close and the appeal proposal in its appeal statement and, as can be seen from my appeal decision, I agree that there are differences between the two. Therefore, it does not follow that approval of the development at 10 Orchard Close should have automatically led to approval of the current proposal.

6. The Council's case comprises its appeal statement and report. The harm is set out in the subsection on visual amenity and paragraphs 11 and 16 state that the proposal would result in significant visual harm and significant harm to the character and appearance of the area. Paragraph 5 of the report refers to paragraph 11(d) of the National Planning Policy Framework (the Framework) and paragraph 7 outlines the benefits. The Council's appeal statement sets out that one additional unit is not considered to significantly contribute towards the Borough's housing needs to outweigh the harm identified in the reason for refusal.
7. Ideally the report would have used the wording from paragraph 11(d)(ii) of the Framework but, when read together, the Council's report and appeal statement adequately justify its reason for refusal. Whilst I do not agree with the Council in respect of the harm to character and appearance when weighed against the benefits of the proposal in terms of paragraph 11(d)(ii) of the Framework, I do not consider the Council's arguments to be inherently untenable or unreasonable. In my view, the Council has produced sufficient evidence to substantiate its case.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

A Wright

INSPECTOR