



Costs Decision

Site visit made on 31 October 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2023

Costs application in relation to Appeal Ref: APP/M3645/W/23/3320215 Little Woodbury, Bones Lane, Newchapel, Lingfield RH7 6HR

- 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 M Sherwood for a full award of costs against Tandridge District Council.
 - The appeal was against the refusal of planning permission for the demolition of existing dwelling and erection of replacement dwelling without complying with a condition attached to planning permission Ref TA/2022/344 dated 22 December 2022.
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Decision

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

Reasons

1. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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.
2. In this case, the appellant argues that the Council acted unreasonably in not permitting the application to remove the condition given the case presented. In particular, the officer report failed to consider the appellant's evidence thoroughly, contained vague or generalised assertions, ignored relevant appeal decisions and failed to apply national policy regarding conditions and permitted development rights. Resolving the matter should not have required an appeal which involved unnecessary and wasted expense for the appellant.
3. The appellant submitted a detailed planning statement dated January 2023 in support of the application which should have been addressed at least briefly in the officer report. Instead, the report (and reason for refusal) simply argues that exercising Class E rights would result in inappropriate development in the Green Belt and that very special circumstances to allow it would not exist. This misses the point. It should have been explained how the condition in this case meets the relevant tests in paragraphs 56 and 54 of the National Planning Policy Framework. To not do so was unreasonable behaviour.
4. The statement included appeal and cost decisions which illustrate the issues. Two cases are directly analogous, appeals against the removal of permitted development rights for replacement dwellings in the Green Belt. As the costs decision¹ says: "the Council accepts that (the replacement dwelling) is not

¹ APP/T0355/A/12/2188082

materially larger (than the existing). Permitted development rights had not been removed from the previous dwelling, and the replacement makes little difference in terms of openness. The Council contends that the condition would prevent occupiers of the new house from carrying out enlargements that would harm the openness of the Green Belt and the character and appearance of the countryside. However, the existing dwelling has such rights, and the provision of a replacement makes little material difference to this position”.

5. In this case the permitted development rights removed are for ancillary curtilage buildings, not the enlargement of the dwelling, so the connection between the condition and the development is more tenuous. Whilst the Council’s appeal statement belatedly attempts to justify the condition by reference to the 10% increase in volume and unusually large curtilage, these do not amount to the clear justification necessary when it is agreed that the replacement dwelling is not materially larger and the existing property benefits from Class E rights.
6. The Council has thus failed to produce evidence to substantiate the reason for refusal on appeal, persisted with a condition which an inspector in a similar case has previously indicated to be unwarranted, and imposed a condition that was not necessary, relevant to the development and reasonable. In the PPG these are examples of unreasonable behaviour that may give rise to an award of costs against a local planning authority².
7. An appeal should not have been required and the appellants costs in pursuing one were therefore an unnecessary and wasted expense.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Tandridge District Council shall pay to Mr M Sherwood, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to Tandridge 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 Reed

INSPECTOR

² Paragraph 049 Reference ID 16-049-20140306