

Costs Decision

Site visit made on 1 December 2023

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15.12.2023

Costs application in relation to Appeal Ref: APP/K0235/D/23/3329478 Land at 307-309 Ampthill Road, Bedford, MK42 9RA

- 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 A Fhalora for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of planning permission for the conversion of garage block in rear garden into a granny annexe.
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Decision

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

Reasons

2. 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 makes clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or if it makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The appellant submits that the Council has acted unreasonably and is seeking an award of costs for the following reasons:
 - The Council failed to consider the development put before them;
 - Treating the proposed development as an independent dwelling led to an erroneous assessment of the case and inaccurate assertions about the proposal's impact on the surrounding area, nearby occupiers and highway safety resulting in three reasons for refusal; and
 - The Council refused permission on grounds capable of being dealt with by condition.
5. The Council's contention was that the proposed development related to an independent dwelling, not an annexe to the host property. It will be seen from my appeal decision that I have reached a different conclusion in this

regard to that of the Council. I assessed the proposed development on the basis of a householder application for the conversion of an outbuilding in the garden, as per the submitted planning application form.

6. The Council refers to other appeal decisions. However, insufficient detail is provided to attribute any material weight to these. Moreover, the Council does not refer to any relevant case law to substantiate its position.
7. It was unreasonable for the Council to assess the proposal differently from the description of development applied for. The Council's assessment of the case as an independent dwelling led to consequent reasons for refusal that the appellant has been required to address in his appeal.
8. In reaching my decision on the appeal I have accepted the Council's suggestion of a restrictive condition for ancillary accommodation. When considering the planning application, the Council could have conditioned the use, as they have now suggested in the context of this appeal, to ensure the proposed development would be ancillary to the existing dwellings. They did not do this because they considered monitoring and enforcement would be difficult.
9. However, model condition 47, as set out in retained Appendix A of otherwise cancelled Circular 11/95: Use of conditions in planning permission, which is referred to in the PPG, provides for just such a restriction. As set out in my appeal decision, I therefore disagree with their view regarding enforceability.
10. Had such a condition been imposed it would have resolved the Council's concern in relation to the creation of an independent unit and the consequent concerns regarding character and appearance, living conditions and highway safety.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

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 that Bedford Borough Council shall pay to Mr A Fhalora, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Bedford 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.

KE Down
INSPECTOR