



Costs Decision

Site visit made on 6 December 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 February 2024

Costs application in relation to Appeal Ref: APP/Y2620/W/23/3321023 5 Meadow Way, Sheringham, Norfolk NR26 8NF

- 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 Stephen McDermott for a full award of costs against North Norfolk District Council.
 - The appeal was against the refusal of planning permission for extension to existing property to provide a self-contained parent-annexe, directly linked to the main dwelling, as well as construction of two new garage/stores.
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Decision

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

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. Local planning authorities (LPAs) are required to behave reasonably in relation to procedural matters at the appeal and with respect to the substance of the matter under appeal. Examples of unreasonable behaviour may include failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, or refusing planning permission on a planning ground capable of being dealt with by conditions.
4. The applicant for costs contends that the Council made assumptions contrary to the application documents, and thereby misdirected themselves as to the highway safety implications of the proposal. They also contend that the Council were unwilling to engage with them during the application process, which may have resolved design issues thus avoiding the appeal, and that landscaping issues could have been resolved by planning condition.
5. Whether or not the proposal would have a harmful impact on highway safety is contingent on whether it is a form of ancillary accommodation. The Council acknowledge that accommodation which enables independent living would not necessarily amount to a separate dwelling, yet their assessment appears to have been heavily focussed on the level of self-containment proposed, in addition to the scale of the development and increased parking. This led the Council to conclude that the proposal would have the same impact as a separate dwelling.

6. However, limited weight appears to have been given to the proposed annexe's physical relationship to the host dwelling, including its proximity, intervisibility, shared access arrangements and lack of private external spaces, all of which would considerably affect how the annexe could be used and curtail its functional independence, now and in the future.
7. The Local Highway Authority (LHA) contend that the scale of development could, without restriction, be occupied independently, and this appears to also have been a determinative factor in the Council's decision. However, the LHA state that the pivotal point of whether or not the proposed new accommodation is ancillary in nature or if the link between the two can be severed in the future is a matter for the Council to determine as LPA. The LHA's own position on this matter is therefore somewhat inconclusive.
8. Moreover, the LHA indicate that restricting the use of the annexe could have overcome their concerns. The use of planning conditions for this purpose has also been proposed by the appellant. Nevertheless, the Council does not appear to have had regard to the implications in planning law of the building not being used as proposed, nor to the potential for planning conditions to be used to further restrict the use of the annexe as suggested.
9. Overall, I find that the above amount to inaccurate assertions about the proposal's impact and a failure on behalf of the Council to substantiate the first reason for refusal. Additionally, there is no compelling evidence to demonstrate that the matter could not otherwise have been dealt with by conditions. This therefore amounts to unreasonable behaviour, as described in the PPG.
10. I note the appellant's frustrations regarding the level of engagement offered by the Council during the application process. The PPG and the Framework encourage LPAs to take a positive approach and work proactively with applicants. However, the Framework also encourages early engagement and good quality pre-application discussion and the evidence before me indicates that the Council did provide detailed pre-application advice.
11. While elevational drawings had not been provided as part of that enquiry, guidance in respect of design matters was given based on the information submitted. Additionally, the requirement for a methodology statement for construction in the root protection area of protected trees was also highlighted.
12. Despite this, there was still disagreement between the parties regarding these matters at application stage, and it will be seen from my decision that I have found in the Council's favour with regard to the third reason for refusal. It is therefore not clear that the views of both parties could have been easily reconciled had further discussions taken place during the determination of the application. Moreover, having already provided pre-application guidance, the Council was under no obligation to seek additional information or amendments during the application process, and is justified in reaching a decision on these matters based on the information submitted.
13. Policies EN2 and EN4 of the North Norfolk Local Development Framework Core Strategy Incorporating Development Control Policies September 2008 (the Core Strategy) require that proposals demonstrate that they will protect, conserve and, where possible, enhance the special qualities and local distinctiveness of the area and the pattern of distinctive landscape features, such as trees, and retain existing important landscaping and natural features.

14. Without sufficient information at application stage to demonstrate the impact of the proposal on protected trees, including any necessary mitigation or protection measures, the Council could not be sure that the development would comply with these policy requirements. This requirement was also highlighted at pre-application stage. I thus do not find it unreasonable of the Council to expect this information to be provided prior to determination of the application.
15. In view of the above, I do not find that the appeal could have been avoided altogether. However, the Council's first reason for refusal resulted in the appellant having to dedicate a considerable proportion of their appeal submission to covering matters relating to the nature of the occupation of the proposed development and the perceived traffic impact and associated effect on highway safety. This included seeking additional legal advice and the preparation of statutory declarations. Had the Council acted reasonably in respect of this matter, this additional expense could have been avoided.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

17. 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 North Norfolk District Council shall pay to Mr Stephen McDermott, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against the Council's first reason for refusal relating to the nature of the occupation of the proposed development and the perceived traffic impact and associated effect on highway safety.
18. The applicant is now invited to submit to North Norfolk 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Ryan Cowley

INSPECTOR