



Costs Decision

Site visit made on 22 January 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Costs application in relation to Appeal Ref: APP/P2365/D/23/3330146 Ellewood, 4 Chestnut Close, Newburgh, WN8 7AH

- 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 Woodman for a full award of costs against West Lancashire Borough Council.
 - The appeal was against the refusal of planning permission for construction of a single storey extension to the rear.
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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 applicant's cost claim is on the grounds that the Council has acted unreasonably. It is claimed that the Council has failed to consider established case law and has not acted consistently following previous refusals at this site.
4. The applicant states that the Council has incorrectly applied criterion (c) of Policy GB4 of the Council's Supplementary Planning Document Development in the Green Belt (2015) (Green Belt SPD) when refusing the application. Further commenting that it is clear from the Officer Report that the only reason the proposal was considered to be in conflict is because of the "*unacceptable impact upon perceived openness*".
5. When assessing extensions and alterations to buildings in the Green Belt, criterion (c) of Policy GB4 in the Green Belt SPD requires, amongst other things, the design of the proposed extension to not materially harm the openness of the Green Belt through excessive scale or bulk, or by virtue of its location.
6. There is however case law¹ which established that this is not a test within paragraph 154 of the Framework, and openness is only to be taken into account when it is expressly stated as a determining factor in gauging inappropriateness. As such, and as detailed in my decision letter, I consider this criterion of Policy GB4 within the Green Belt SPD to not be consistent with

¹ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev1) [2016] EWHCA Civ 404

the Framework, and therefore I attributed it only very limited weight in the determination of the appeal.

7. The applicant contends that the Council should have been aware of this case law, and that they advised the Council of this case law as part of the application submission.
8. Whilst I acknowledge that the Council has made reference to this caselaw in its rebuttal to the cost claim, there is a lack of clarity as to whether the case law was before the Council when it made its decision.
9. Moreover, I am not convinced that this was the only reason the Council considered the proposal to be in conflict with the SPD, or other relevant policies, as the reason for refusal states that the proposed extension would represent a disproportionate addition over and above the size of the original building.
10. Whilst I have, in my decision letter explained my reasons for reaching a different conclusion to the Council on this matter, I do not consider the Council's behaviour, or its decision to refuse the application on the basis that the appeal proposal would represent a disproportionate addition over and above the size of the original building, was unreasonable.
11. The applicant has also stated that the Council has been inconsistent, on the basis that the reason for refusal and Officer Report introduced a new issue in respect of new areas of hardstanding that was not raised on the previous refusals at this site. The applicant has made reference to case law² in respect of the importance of consistent decisions.
12. The Council claims that the absence of referring to the hardstanding area in the previous decisions does not mean that this matter was not considered when assessing the cumulative impacts on the previously refused applications. However, Part 6 Article 35(b) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 states "*where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision*".
13. As such, if as the Council suggest the cumulative impacts of the extension and hardstanding was taken into account when assessing the previous refusals, it failed to clearly and precisely articulate this within its reason for refusal, or the Officer Report. I therefore consider that the Council has acted somewhat unreasonably in this regard.
14. Notwithstanding the above, unreasonable behaviour by the Council is not in itself sufficient to justify an award of costs. Paragraph 32 of the PPG states that "*An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.*"
15. The applicant claims that the decision of the Council to refuse the application has resulted in additional time and cost associated with the appeal. However, as detailed above the Council also refused the application on the basis that the

² North Wiltshire DC v SSE & Clover [1992] JPL 955, (1993) 65 P&CR 137 and The Queen (on the application of the Midcounties Co-operative Limited) v Forest of Dean District Council v Aldi Stores Limited [2017] EWHC 2056 (Admin)

appeal proposal would represent a disproportionate addition over and above the size of the original building, and I do not consider this to be unreasonable.

16. Consequently, and in my judgement, the Council introducing a new issue within its reason for refusal on this application did not alter the Council's overall determination of the appeal proposal, and thus would not have changed the need for the applicant to submit an appeal. Subsequently, the introduction of this issue has not resulted in unnecessary or wasted expense to the applicant.

Conclusion

17. I conclude that an element of unreasonable behaviour has taken place, however I do not consider that this unreasonable behaviour has resulted in unnecessary or wasted expense for the applicant. As such a full award of costs is not justified.

R Major

INSPECTOR