



Costs Decision

Site visit made on 26 March 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2024

Costs application in relation to Appeal Ref: APP/P1133/W/23/3329708 6 Rowan House, North Street, Denbury, Devon TQ12 6DJ

- 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 & Mrs Burford for a full award of costs against Teignbridge District Council.
 - The appeal was against the refusal of planning permission for detached oak framed single storey garden outbuilding without complying with a condition attached to planning permission Ref 20/02140/HOU, dated 14th January 2021.
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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 PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals.
4. Examples of behaviour that may give rise to a substantive award of costs include where a local planning authority has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations, and where planning permission has been refused on a planning ground capable of being dealt with by a condition.
5. The applicants say that the Council behaved unreasonably by determining the application on the basis that a new dwelling capable of independent occupation would be created, despite its description as accommodation for an elderly relative. They claim that the Council did not properly consider whether the occupancy of the building could be controlled to avoid unlawful occupation as an independent dwellinghouse. This, they say was done despite a condition being suggested during the application.
6. In this respect, a costs decision is reference by the applicant at Haselden Farm, East Sussex. That decision is included within the submission, though it is materially different to this proposal. It was refused against floor space and outdoor amenity space standards applicable to dwellinghouses.

7. The Council claims that the Officer report and other correspondence sets out clearly why the physical characteristics of the site meant that two planning units would be created. It adds that had pre-application discussions taken place, the applicant would have been advised not to pursue an application and would have been able to avoid an appeal.
8. Additionally, the Council highlights that a similar development within the district at Longlands House was dismissed, along with the associated costs decision. However, unlike this appeal, that site was not lawfully certified as a garden and was described as having a physically separated field gate access. Moreover, little information was provided in respect of a functional need for that proposed annexe, whereas with this appeal, the applicant's need for the intended use has not been disputed by the Council. Furthermore, the Inspector concluded that the subject building would not fall within the same planning unit as Longlands House. I have concluded in this appeal that the building would be in the same planning unit. The cases are not comparable.
9. However, the Council's concerns that the separation distances between the main property and appeal building represent a disjointed relationship are clearly expressed. Whilst I do not agree with the conclusions drawn, the Council Officer used their planning judgement based on fact and degree. Given the Council concluded the development could not be ancillary, it would not have then been appropriate to agree to an occupancy condition.
10. As such, even though the Council was wrong to refer to the development as a new dwelling, the appeal would have been unlikely to have been avoided. Consequently, I do not find that unnecessary or wasted expense has been incurred. A full award of costs is not, therefore, warranted.

J Hills

INSPECTOR