



Costs Decision

Site visit made on 18 April 2024

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2024

Costs application in relation to APP/W2845/D/24/3337673

2 Terrington Close, Brackley, West Northamptonshire, NN13 6EN

- 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 Pete Davey for a full award of costs against West Northamptonshire Council.
 - The appeal was against the refusal of planning permission for removal of existing conservatory and erection of rear single storey extension.
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Decision

1. The application for a full award of costs is allowed.

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. The PPG makes it clear that a Local Planning Authority (LPA) is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. The appeal followed the refusal of permission on 12 January 2024 of an application made on 6 September 2023 for removal of existing conservatory and erection of rear single storey extension. There was a single reason for refusal which was concerned with the impact of the proposal upon amenity space for future occupiers as a result of overdevelopment and the character and appearance of the host dwelling. My decision, which accompanies this costs decision, disagreed with the Council's decision, and allowed the appeal.
4. The appellant's application for costs is made on a substantive basis in that it is stated that they feel the Council failed to substantiate their reason for refusal and acted incorrectly as a result of not taking into account the presence of a fallback position which represents a material planning consideration. The failure to take into account is stated to have resulted in an unnecessary appeal.
5. I do not find that delays in validation or the time taken to determine the proposal are of direct relevance to the proposal having been refused, however, I can understand that such delays are frustrating for an appellant. Despite this, other than the extension of time which is stated to have been granted following the appellant's further comments – I have no real evidence before which supports that the Council took the relevant fallback position into date.

6. I can see that Planning and Heritage Statement submitted with the application noted the fallback position and, in addition, this was raised again with the Council by email during the application process – this latter point is acknowledged by the Council in their cost application rebuttal. Despite this there is no evidence of correspondence (such as emails, or meeting notes) which would support that the Council have fully taken this into account. Furthermore, the presence of such a material consideration is not discussed at any point within the Council's delegated report upon which refusal was based.
7. Correspondence with the appellant as to concerns with the proposal as submitted are noted, however, this does not overcome the fact that there is no evidence within any reports or correspondence that the fallback was in fact taken into account. Had the fallback position been noted within the delegated report, with discussion/reasoning, the Council could still have proceeded to refusal depending on their view in relation to the fallback position, however, at this stage there is no evidence it was considered nor any evidence of why or how this was considered within the reasoning or approach and decision.
8. It is acknowledged that the proposal did not meet the requirements of permitted development as submitted and indeed the correct approach to assessment, as a householder application, is to consider the proposal against the Local Plan, Design Guidance and the National Planning Policy Framework 2023. Despite this it is a well-established concept that fallback positions are a material consideration and, in assessing the proposal as unacceptable against policy, the assessment should then have considered the implications of the fallback position that had been raised by the appellant. In this case there is both cause and effect which has resulted in unnecessary expense. It can be seen from my decision that I found there were insufficient grounds to refuse the appeal as a result of my findings for the refusal reason when considering the fallback position as a material consideration.
9. In failing to evidence that a material consideration has sufficiently been taken into account I consider that the Council has acted unreasonably resulting in unnecessary expense for the appellant. 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

10. 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 West Northamptonshire Council shall pay to Mr Pete Davey 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.
11. The applicant is now invited to submit to West Northamptonshire 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.

Eleni Randle

INSPECTOR