



Costs Decision

Site visit made on 28 May 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 June 2024

Costs application in relation to Appeal Ref: APP/R3650/W/23/3324957 Hill Farm Barn Highfield Lane, Thursley, Godalming GU8 6QQ

- 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 Michael Spencer for a full award of costs against Waverley Borough Council.
- The appeal was against the refusal of planning permission for extensions and alterations to the existing garage.

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 ('the 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. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. Examples given in the PPG of behaviour that may give rise to a substantive award against a local planning authority include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The Council's first reason for refusal of the planning application concerned the effect of the proposal on the Green Belt. Within the Green Belt, the National Planning Policy Framework outlines certain forms of development that would be not inappropriate, including the 'extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building'. In considering whether or not the proposal would result in disproportionate additions over and above the size of the original building, the Council's officer report on the application stated that '*as a guideline, a proposal which individually or cumulatively increases the floor space of the original building...by more than 40% will unlikely be considered proportionate and therefore would constitute inappropriate development.*'
4. However, while the report indicated that the appeal site was located in the Green Belt outside of a defined settlement boundary, the Council now accepts that this was an error and that the site is within Thursley. It also accepts that the provision at Policy DM14 b) of the Local Plan Part 2: Site Allocations and Development Management Policies 2023 ('the LPP2') which indicates that

floorspace increases of 40% or more will normally be considered to be disproportionate would not be relevant here since this applies to development outside of defined settlement boundaries.

5. Nevertheless, Policy DM14 a) would be relevant to the appeal proposal and sets out that in all cases, whether a development is disproportionate or materially larger will be assessed by considering changes in scale, mass, height, and floorspace. On floorspace, I recognise that the Council's report had previously highlighted the 40% guideline suggested at DM14 b), but this was in the context of a level that would be unlikely to be considered proportionate rather than any binding threshold. In any event, the Council identified a floorspace increase to the original building of 87.1%. To my mind, such a large increase could not reasonably be described as 'proportionate'.
6. Furthermore, the Council's report specifically states in the penultimate paragraph of section 8 that 'the increase in bulk, massing and floor space, in addition to the original building is considered to be disproportionate'. I accept that there is no detailed discussion of bulk and massing within the report, but this indicates to me that the overall view that the proposal would be disproportionate additions was not reached solely on the basis of floorspace.
7. In assessing the proposal, I note that the applicant's evidence asserts that a former lean-to structure was part of the original building and so should be taken into account in the assessment of whether the development would be disproportionate although this is disputed by the Council. In my appeal decision, I have found that the proposal would be an exception to inappropriate development in the Green Belt as limited infilling in villages. It was not therefore necessary for me to specifically address the matter of whether or not the proposal would be disproportionate as part of my appeal decision. However, having reviewed the submitted information, I do not consider there to be conclusive evidence either way in respect of the inclusion of the lean-to and I find some merit in the arguments made by each main party. Accordingly, it would in my view come down to a matter of planning judgement whether or not the lean-to should be taken into account and it was not unreasonable for the Council to have excluded it.
8. Even if the lean-to were included as part of the original building, the applicant's evidence cites paragraph 3.16 of the LPP2 which refers to use of a visual test to assess whether extensions are acceptable within settlements. In addition, Policy DM14 specifically highlights scale, mass and height along with floorspace as factors to be considered in assessing whether development would be disproportionate. These would all reflect matters of planning judgement and while the applicant may disagree with the Council's view, that does not mean it is unreasonable. I am satisfied that the sum of the Council's evidence adequately explains and substantiates its position that the proposal would be disproportionate.
9. The Council's error in identifying the site as being located outside of a settlement boundary and reference to a 40% guideline in considering floorspace increases is regrettable. Nevertheless, I am not persuaded given the above factors that the Council would have been likely to have reached a different overall conclusion on the application had it not made this error and I find that it has sufficiently justified its first reason for refusal. I have ultimately reached a different overall conclusion to the Council in respect of Green Belt,

but this reflects the evidence provided at appeal stage in relation to the 'limited infilling' exception which was not part of the application material and so was not before the Council at the time of its decision. Consequently, I consider the Council's first reason for refusal was well-founded and that this is not a case where there has been unreasonable delay to a development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.

10. In this context, I do not find the Council's error to amount to unreasonable behaviour that has caused the applicant to incur unnecessary or wasted expense in the appeal process in respect of the first reason for refusal.
11. The second reason for refusal of the planning application related to effects on trees. The Proposed Site Plan submitted as part of the application indicated tree protection fencing, ground protection and root protection zones. However, there was no substantive supporting arboricultural information illustrating the basis for these areas so as to demonstrate that they would be appropriate, nor providing detailed particulars of the measures. I consider such information would be reasonably required to adequately inform an assessment of potential effects on trees.
12. The Arboricultural Impact Assessment ('AIA') submitted with the appeal provides this information, and the Council is now satisfied that effects on trees would be acceptable. Had the Council raised the need for further information on trees before determining the application, the applicant may have been able to address it and avoid a reason for refusal. However, while the applicant suggests that the AIA depicts almost identical tree protection measures to those shown on the site plan, there are some differences. Moreover, the requirement for detail to substantiate the suggested measures was in itself reasonable. Consequently, the applicant would have needed to provide further information on trees in any case.
13. I have found above that the Council's first reason for refusal was well-founded, and so the appeal could not have been avoided. Even if I were to find that not requesting additional information before determining the application was unreasonable of the Council, I am not therefore persuaded that this would have caused the applicant to incur unnecessary or wasted expenditure in the appeal process that would not otherwise have been required.
14. For these reasons, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for a full award of costs is refused.

J Bowyer

INSPECTOR