Costs Decision

Site visit made on 28 May 2024

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th June 2024

Costs application in relation to Appeal Ref: APP/M1005/W/23/33338923
1 The Dairy, Main Road, Lower Hartshay, Ripley, Derbyshire DE5 3RP

- 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 Dave Palmer for a full award of costs against Amber Valley Borough Council.
- The appeal was against the refusal of planning permission for a first-floor extension over kitchen, creation of first floor link, part single and part two-storey extensions to the rear, two-storey entrance porch and balcony to the new front elevation.

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. The word "unreasonable" is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774. Unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive. In this case, the applicant is seeking an award of costs on substantive grounds.

3. The exception at paragraph 154 (c) of the National Planning Policy Framework (the Framework) permits the extension or alteration of a building provided that the proposal would not result in disproportionate additions over and above the size of the original building. The applicant submits that the Council erroneously assessed the proportionality of the proposal based on a comparison between the original dwelling, in this case the farmhouse and the extent of what was proposed. In failing to include the attached barn, which also pre-dates 1948 in the calculations, it is alleged that the percentage increases were distorted and thus the Council's assessment was fundamentally flawed.

4. I accept that the wording of Policy EN2 of the Amber Valley Borough Local Plan 2006 (Local Plan) differs to the wording of the Framework and that the Council's assessment references 'original dwelling' throughout. Nevertheless, for the reasons outlined in my decision I am not convinced that the barn, despite pre-dating 1948 would be part of the 'original building' for the purposes of the Framework. However, even if the Council were to have assessed the proposal based on the combined metrics of the two original buildings, there is no evidence before me to suggest that they would have reached a different conclusion. Indeed, in my decision, I have found that the cubic volume and

floorspace percentage increases would still amount to a disproportionate addition over and above the totality of the two buildings.

5. Considering the above, it seems to me that the degree of consistency between saved Policy EN2 of the Local Plan and the Framework would not be determinative given that the proposal would still be contrary to the provisions of the Framework. Further, as harm to the Green Belt was identified, this provided a clear reason for refusing the development meaning that the presumption in favour of sustainable development set out at Paragraph 11 d) of the Framework would not apply. Therefore, the Council's assessment was not misdirected in this regard.

6. In finding the proposal to be inappropriate development in the Green Belt, very special circumstances would need to be demonstrated to justify the grant of planning permission. The Planning, Design and Access Statement (PDAS) sets out a potential fallback position under permitted development rights and highlights several nearby schemes consented by the Council which were of a greater percentage increase to the proposal. In addition, the PDAS highlights the previously developed land status of the appeal site which it argues carries significant weight. There is no acknowledgment or assessment of these 'other considerations' within the Council's delegated report or planning balance. In failing to have regard to these other considerations, I find that the Council's behaviour was unreasonable.

7. However, as set out in my decision, the fallback position would, in my view be less harmful than the appeal proposal. Further, the other examples, despite being of a greater percentage increase were materially different to the appeal scheme. Therefore, the fact that larger schemes have been consented, does not demonstrate inconsistent decision making. Turning to the PDL status, the exception listed at paragraph 154 (g) of the Framework applies on the basis that the proposal would not have a greater impact on the openness of the Green Belt than the existing development. In this case, the proposal would result in a considerable increase in the spatial footprint of development at the appeal site which would lead to an inevitable and demonstrable loss of openness. This exception would therefore not apply and the proposal would still be inappropriate development in the Green Belt. Thus, even if the Council acknowledged the PDL status of the land, this would not have altered the outcome.

8. Accordingly, even if the Council were to have acknowledged and balanced the other considerations, there is no evidence to suggest that these would have outweighed the harm to the Green Belt. Consequently, it seems to me that the refusal of planning permission would still be justified resulting in an appeal situation. Therefore, the Council's unreasonable behaviour has not resulted in unnecessary or wasted expense.

Conclusion

9. For the reasons outlined above, I find that unreasonable behaviour resulting in unnecessary or waste expense, as described in the PPG has not been demonstrated. The costs application is therefore refused.

H Wilkinson

INSPECTOR