



Costs Decision

Site visit made on 11 June 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2024

**Costs application in relation to Appeal Ref: APP/J1915/W/23/3332220
The Grange, Swades Farm, Wareside restricted Byway 024, Hertfordshire
SG12 7QG**

- 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 Ian Holman for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for conversion of barn at Swades Farm to form a residential dwelling, demolition of an existing outbuild and erection of new garaging.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

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 Council had concerns regarding the location of development and conflict with the development plan policies and the National Planning Policy Framework in this regard. Whilst I concluded in a similar vein regarding this issue, I found in my appeal decision that any adverse impacts of doing so would not significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. This was a matter of planning judgement. The Council has set out its reasoning for reaching a different conclusion in determining the application. While I do not agree with that conclusion, I do not consider that the Council acted unreasonably in refusing permission on such grounds.
4. A number of appeal decisions have been brought to my attention by both parties. In my decision I have set out the reasons why I do not consider any of them to be directly comparable. I therefore do not concur with the view that the Council has acted unreasonably in not determining cases in a consistent manner.
5. In respect of reason for refusal No 2 with regards to the air source heat pump (ASHP) the evidence before me indicates that the Council had received the amended plans removing this element from the development proposal. However, their concerns regarding insufficient noise assessment formed the second reason for refusal. Accordingly, there was no conflict with the development plan as permission was no longer sought for this element of the scheme. As such, this negated the need for additional assessment of noise.

6. The applicant submits that the Council were unreasonable in its stance over the exercise of permitted development rights. However, if the appellant wishes to ascertain whether the development would be lawful, they may make an application under section 192 of the Act. The Council has therefore not acted unreasonably by not having consideration to permitted development rights.
7. Notwithstanding the above, on the basis that the ASHP had formally been requested to be removed from the proposal, and with the submission of a revised plan, I conclude that the Council has behaved unreasonably in the ASHP forming a reason for refusal. This has led to unnecessary wasted expense in having to address this matter in their appeal.
8. On the matter of renewable features/climate control measures, as set out in reason for refusal No 3, regardless of compliance with other regimes, I consider the application of the policy to be reasonable. It is understood that a Planning Guidance Document for Noise Assessments does not exist and was incorrectly referred to by the Council during the processing of the application. Be that as it may, as set out in my decision, I am satisfied that such matters could be secured with via the imposition of a suitably worded planning condition.
9. With regards to concerns regarding the finish of the proposed outbuilding and the solar panels, as set out in reason for refusal No 4, I have concluded that such matters could be secured via the imposition of a suitably worded planning condition. Accordingly, I find that the Council refused permission on a planning ground capable of being dealt with by condition.
10. For the reasons outlined above, the need to deal with the issues relating to the ASHP, the renewable features/climate control measures and the external finish of the outbuilding and solar panels, resulting in unnecessary wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

11. 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 East Hertfordshire District Council shall pay Mr Ian Holman, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of reasons 2, 3, and 4.
12. The applicant is now invited to submit to East Hertfordshire District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

R. Gee

INSPECTOR