



Costs Decision

Site visit made on 25 June 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2024

Costs application in relation to Appeal A Ref: APP/E2205/C/22/3298542 and Appeal B Ref: APP/E2205/C/22/3298543

Land at 4 and 5 Worsenden, Sissinghurst Road, Biddenden, Ashford, Kent TN27 8EH

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Ashford Borough Council for a full award of costs against Ms Emily Carpenter (Appeal A) and Mr Alexander Dean (Appeal B).
- The appeal was against an enforcement notice alleging the erection of a detached single garage.

Decision

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

Preliminary Matters

2. It is unclear whether the application for costs was intended as a full application as it only refers to the appeal under ground (a). For clarity, I have dealt with it as a full application for costs.

Reasons

3. 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 application was substantive, relating to the merits of the appeal.
4. I note that the appeal decision reference APP/E2205/D/18/3216206 relating to a previous planning application reference 18/00939/AS for this development dealt with the planning permission for a car port at Swallows House only briefly. However, it was clear from their decision that the visual harm related to the location of the garage in front of the crescent of dwellings at 1-8 Worsenden. It was, therefore, easily distinguished from development in front of other dwellings, including nearby Swallows House, Maclaren Barn and Green Hedges.
5. The new arguments from the appellant are, in large part, that more weight should have been given to other garages in front of dwellings elsewhere in order to ensure consistent decision making. However, I do not accept that is the case. The character and appearance of areas can vary hugely and there was a particular and clearly expressed reason why the location of this garage was distinct from other areas, even the neighbouring dwelling at Swallows House. I consider that decision making has not been inconsistent. I note that those other decisions were made by the Council rather than an Inspector at

appeal. This argument was, therefore, unreasonable. In having to deal with this, the Council incurred unnecessary or wasted expense in the appeal process.

6. Nevertheless, it was not unreasonable to make an appeal under ground (f) to retain a part of the development constructed with a flat instead of pitched roof. In order to consider the obvious alternative put forward, I needed to be able to consider the planning merits. That was only possible if there was a ground (a) appeal. On that basis, submission of a ground (a) appeal with details of the obvious alternative was not unreasonable.
7. It follows then, that the arguments under ground (a) were also not unreasonable in relation to suggesting that alterations to the garage might overcome the Council's, and previous Inspector's, concerns. Other arguments were put forward that appear not to have been raised in the previous appeal, or not given the weight suggested by the appellant. These include in relation to the suggested fallback position, provision of conditions and lack of potential alternative location for the garage beside or to the rear of the house. Although the weight I have attributed to these is less than the appellant suggested, it was not unreasonable for the appellant to put them forward. On that basis, there was no unnecessary or wasted expense in relation to these parts of the ground (a) appeal, or the ground (f) appeal.
8. The appellant suggests that the Council have not been put to any expense. It is not for me to assess what costs may have been incurred by the Council, although I note there may be costs in resisting the appeal and defending its decision to issue an enforcement notice.
9. I will allow the application for costs in part in relation to arguments around consistency of decision making in the appeal on ground (a). I will refuse the application for costs in all other respects.

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 Ms Emily Carpenter and Mr Alexander Dean shall pay to Ashford Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to arguments around consistency of decision making in the appeal on ground (a); such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Ms Emily Carpenter and Mr Alexander Dean, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

AJ Steen

INSPECTOR