



Costs Decision

Site visit made on 2 September 2024

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Costs application in relation to Appeal Ref. APP/E3715/D/24/3344039 Millfield, Mill Row, Wolvey, Hinckley LE10 3HS

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr S Brindle for a full award of costs against Rugby Borough Council.
 - The appeal was made against the refusal of planning permission for change of use of workshop in existing outbuilding to a bedroom.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance (the Guidance) advises that all parties in appeals are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The Council has not responded to the costs application, so the points raised have not been rebutted. Still, this application for costs has been considered on its merits in the light of the costs advice found within the Guidance, the appeal papers, the costs correspondence and all the relevant circumstances relating to the planning application and the appeal. The parties are also referred to my appeal decision.
4. The application for an award of costs is made on a substantive basis, relating to the planning merits of the appeal. The gist of the case, which is made with appropriate cross-references to the Guidance, is that the Council acted contrary to well-established case law and that there were no grounds for refusal of the application, with the reasons for refusal being unsupported by objective analysis and largely based on inaccurate assertions and a misunderstanding of the proposal. So, all this meant that the Council prevented development which should clearly have been permitted having regard to its accordance with the development plan, national policy and other material considerations.
5. I found it more likely than not that the proposal would not have amounted to development requiring planning permission. However, within the context of an appeal under section 78 of the 1990 Act (as amended) it is not within my remit to formally determine that matter. I considered the evidence as to whether permission was required so far as it was material to the appeal. If the applicant wishes to

ascertain whether the proposed development would be lawful, he may make an application under section 191 or 192 of the 1990 Act (as amended). I do not therefore criticize the Council for going ahead to determine the planning application the subject of the appeal. Likewise, I sought to reach a decision on the appeal based on the planning merits of the proposal.

6. That aside, I agree with the thrust of the applicant's other arguments and I believe the Council behaved unreasonably in 3 key ways.
7. Firstly, in my view the Council arrived at an unreasonable finding that the proposal could result in the creation of a new dwelling on a separate planning unit by relying on case law which had very little relevance. *Emin v SSE & Mid Sussex DC [1989] JPL 909* is useful only in establishing whether an outbuilding is required for some incidental purpose in order to be permitted development under the terms of the General Permitted Development Order (GPDO). The GPDO does not prevent a householder from erecting a building genuinely required for an incidental purpose and then later seeking to change its use. It was important to consider the proposed works as stated in the planning application form and in the description of the proposal adopted in the Council's decision notice. There was no separate self-contained dwelling before the Council and that would not have been the effect of the proposal. The Council were clearly aware that any future attempt to make use of the outbuilding as a separate or independent unit of accommodation on a new planning unit would first require a separate full planning permission in any event.
8. Secondly, without repeating all the considerations in my appeal decision, the Council should have been far clearer regarding what it was about the proposal that would infringe the relevant local and national policies aimed at protecting Green Belt land. As it is, the Council's decision notice conflicted with the officer's report on this point and the officer's report jumbled up the Green Belt with other land use planning principles that might have arisen if the proposal was for the construction of an entirely new and separate dwelling in the countryside. The degree of confusion was added to by the fact that if the proposal was, incorrectly, treated as the conversion of the outbuilding to a separate dwelling, the Council did not make clear how even this, in itself, would amount to inappropriate development in the Green Belt. In short, the Council misdirected itself as to the nature of the proposal before it, whilst its approach to the matter of the Green Belt was vague and misguided. As such, the first 2 reasons for refusal were not properly substantiated.
9. Thirdly, the proposed use of the workshop as a bedroom had no direct bearing on the creation of 3 windows in the western elevation of the outbuilding. In any event, any objective analysis of the matter of overlooking and loss of privacy could only logically produce one conclusion, along the lines advanced by the appellant and by myself in the appeal decision. Whilst I found it necessary to secure revised plans showing the existing building and the positions of windows, including the window in the eastern side elevation that would serve the bedroom, this could have been accomplished at the application stage.
10. The substantive flaws exhibited by the Council amounted to unreasonable behaviour when viewed in the round. They gave rise to the appeal being made and this resulted in unnecessary expense for the applicant. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a full 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 Rugby Borough Council shall pay to Mr S Brindle, the full 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.
12. The applicant is now invited to submit to Rugby Borough 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.

Andrew Dale

INSPECTOR