



Costs Decision

Site visit made on 28 August 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2024

**Costs application in relation to Appeal Ref: APP/E2001/W/24/3343313
The Barn, Leconfield Parks House, Leconfield Road, Leconfield, Beverley
HU17 7LU**

- 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 Robert Whyte for a full award of costs against East Riding of Yorkshire Council.
 - The appeal was against the refusal of planning permission for the conversion of an existing outbuilding to form an ancillary dwelling together with external alterations.
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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 application relies on the fact that the Council failed to produce evidence to substantiate each reason for refusal; relied upon vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by objective analysis; refused planning permission on a planning ground capable of being dealt with by condition; and acting contrary to, or not following, well-established case law.
4. The Council's first reason for refusal raises concern that the proposal is tantamount to an independent dwelling. The applicant considers that the Council failed to follow established case law on this matter. However, case law suggests that whether an ancillary dwelling would form a separate planning unit is a matter of fact and degree. Therefore, the Council was entitled to conclude that the proposal would be tantamount to an independent dwelling and adequately substantiated their reasons within their officer report.
5. The design of a proposal and its affect on the character and appearance of the surrounding area are both subjective matters. Therefore, it is not unreasonable for the Council to consider the proposal would be harmful in this regard. Furthermore, following consideration of the appeal on its merits alone, I have concurred with the Council on this matter.

6. I have not agreed with the Council in their assessment of the proposal's impact on the character and appearance of the surrounding area with reference to domestic paraphernalia. However, this is a subjective matter and therefore it was not unreasonable for the Council to come to this view. Furthermore, domestic paraphernalia is not development and therefore a condition could not have been used to overcome the Council's concern.
7. At the time the planning application was submitted, it was not the season to conduct bat scoping surveys. Therefore, the applicant asserts that the Council should have deferred determining the planning application until the relevant survey could be undertaken. However, as the Council was refusing the application for other reasons, it was not unreasonable for the Council to determine the planning application rather than request the submission of a bat survey. Consequently, the appeal would have occurred even if the bat survey had been submitted.
8. The Council's first reason for refusal raises issues with the site edged red. I accept that this matter could have been resolved at the application stage had the Council engaged with the applicant. However, the applicant has not demonstrated that they have been put to unnecessary or wasted expense in respect of this matter, which was a limited part of the Council's case.
9. The Council's reasons for refusal 1, 2 and 4 set out in the decision notice are complete, precise, specific and relevant to the proposal. They also clearly state the relevant policies of the LP that the development would conflict with, and have been adequately substantiated by the Council in its Officer Report.
10. The Highway Development Management Officer ("HDMO") raised no objection to the proposal but did raise concern on highway safety grounds if the proposal comprised an independent, rather than ancillary dwelling, due to the lack of passing places along the existing access track. The Council is entitled to not accept the professional advice of the HDMO so long as a case can be made for the contrary view.
11. However, the Council's third reason for refusal relied on the fact that there was no passing place along the access track. The applicant's Planning Appeal Statement of Case stated that this was incorrect. However, the Council did not revisit this matter as part of their Appeal Statement. Additionally, following consideration of the appeal on its merits alone, I was able to determine that the proposal would not have an unacceptable impact on highway safety and therefore sufficient information had been provided by the applicant regarding this matter.
12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council's third reason for refusal on highway safety grounds and a partial award of costs is therefore warranted.

Costs Order

13. 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 Riding of Yorkshire Council shall pay to Mr Robert Whyte, the costs of the appeal proceedings described in the heading of this decision limited to those

costs incurred in respect of the Council's reason for refusal 3 in their decision notice regarding highway safety matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to East Riding of Yorkshire 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.

A Berry

INSPECTOR