



Costs Decision

Site visit made on 16 September 2024

by A Veevers BA(Hons) PGDip(BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2024

Costs application in relation to Appeal Ref: APP/R0660/W/24/3341612 Broomfield, Oak Road, Mottram St Andrew SK10 4RA

- 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 and Mrs Mather for a partial award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for 1) Demolition of existing stables building and dwelling house 2) Erection of a replacement dwelling and detached annexe building with associated works to include a comprehensive landscape scheme.
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Decision

1. The application for 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 applicant contends that the Council acted unreasonably in both procedural and substantive ways. It is alleged that there was a lack of co-operation and engagement on behalf of the Council and this continued following the submission of the appeal, which should take place as part of on-going case management. It is also asserted that the Council prevented or delayed development which should clearly be permitted; refused planning permission for a reason capable of being dealt with by condition; acted contrary to well-established case law; failed to produce evidence to support each reason for refusal on appeal; and made vague, generalised or inaccurate assertions about the proposal's impact which were unsupported by any objective analysis.
4. In relation to the first reason for refusal, it is alleged that the Council failed to accurately consider the fallback position (a Certificate of Lawfulness of Proposed Development¹), citing incorrect figures used to assess the appeal proposal in the Council's Officer Report (OR). The implication is that the appeal could have been avoided, had the Council accurately compared the proposed development with the fallback position. It is also asserted that, even though the Council arrived at different figures to the applicant, no clear explanation has been provided either in the OR, or in any subsequent correspondence from the Council as to how the figures have been calculated.
5. In response, the Council has provided a costs rebuttal, setting out the events leading to its decision. However, it has not provided any substantive evidence to support the figures relied upon in the OR and why they differed from those

¹ LPA Ref: 23/4010M

- provided by the applicant. While not required to do so, the Council also elected not to provide a statement in response to the appeal submission, even though the scale of the fallback scheme formed a significant factor in the appeal and there were differences in the measurements used.
6. Evidence has been provided that indicates the applicant highlighted the differences to the Council prior to and after determination of the planning application in order that they could be clarified and reviewed. Aside from an email advising the Council's figures were based on a measurement of the plans, there was no further engagement by the Council once the application had been determined. This amounts to unreasonable behaviour.
 7. That being said, although there may be errors in the numerical way in which the Council carried out their assessment, a reader of the OR would be left in no doubt as to the reasons that the fallback scheme would not be more harmful than the appeal scheme. It was acknowledged in the OR that the appeal scheme would result in a reduction in footprint, width and depth in comparison to the fallback scheme. The Council's main concern, as I have similarly found, is the increased height and additional mass at first floor of the proposal. This is apparent from the elevation plans and the reason for refusal is clear in this regard. Therefore, based upon the evidence before me, there is nothing that would indicate that the Council would have arrived at a different decision even if it had assessed the scheme solely using the applicant's measurements.
 8. Furthermore, I concluded that very special circumstances did not exist for the reasons set out in my decision. In this case, there is no clear evidence that more detailed discussion of the fallback position or an acceptance of the applicant's measurements by the Council would have changed the outcome.
 9. Whilst I have found that the Council exhibited unreasonable behaviour in not properly explaining measurements or engaging with the applicant in this matter, on the basis of the evidence before me, the appeal could not have been avoided in this regard.
 10. Turning to the second reason for refusal, the design of the appeal proposal differs in a number of respects from the fallback scheme. As such, it was not unreasonable for the Council to consider what effect the proposal, including the annex, would have on the character and appearance of the area. However, the Council appear to have confused character and appearance with the use of the annex.
 11. The reason for refusal refers to the character and appearance of the main dwelling but then goes on to refer to the fact that the proposed annex could create a separate residential unit. These are different considerations. Whilst the OR correctly states the proposed annex would be the redevelopment of Previously Developed Land (PDL) and have gone on to assess the proposal having regard to paragraph 154 g) of the Framework, the reason for refusal and the policy references provided relate to high quality and distinctive character and appearance matters. The Council's OR clearly states that the design of the annex is relatively successful. In this respect this reason for refusal is not precise or clearly articulated.
 12. The Council's OR does provide substantive reasoning as to why they consider the proposed annex could be used as a separate dwelling. However, it would appear that the consideration of the merits of the case have unreasonably

concentrated on whether or not the annex would become an independent unit rather than its specific merits as an annex, as applied for. On the basis of the planning application documentation provided to me, I find that there could have been no doubt as to the purpose of the planning application. The Council did not revisit this matter within the costs rebuttal.

13. The OR refers to, amongst other things, the location of the annex outside the 'residential curtilage' of the Broomfield, thus removing its ancillary purpose. I understand why the Council may consider this factor to be pertinent, although, as set out in my decision, curtilage is not the same as land use. Whilst I have found that the location of the annex would be sited on land outside the domestic garden of Broomfield, this is not a key factor as to whether a building would be considered ancillary or incidental to an existing residential use.
14. The Council appears to given little weight to the stated intentions of the applicant, the wording of the description of the development, whether the condition which the appellant offered would address the concerns with the nature of the accommodation or the physical circumstances of the proposed accommodation located to the rear of the main dwelling with the sharing of facilities such as the parking and amenity areas. Furthermore, the Council have made no assessment of the relevant case law on this matter.
15. The Council concluded that a separate residential unit could be formed without an adequate analysis of the relevant planning matters. If the Council had addressed these matters appropriately it was likely to have concluded that the use of the outbuilding could be restricted to ancillary accommodation by a suitably worded planning condition. Even if it disagreed on these matters there should have been a more detailed analysis as to why, particularly in the context of PDL and relevant case law. Overall, this constitutes unreasonable behaviour.
16. The applicant considers they had no option but to submit further information at the appeal stage to address the Council's concerns raised in the officer report and in this part of the second reason for refusal.

Conclusion

17. In conclusion, for the reasons given above, I consider the Council have behaved unreasonably in relation to procedural matters related to a lack of co-operation with the applicant as part of on-going case management and in constructing a confusing second reason for refusal on the decision notice. I have also found there was substantive unreasonable behaviour on behalf of the Council by not following well-established case law and presenting part of the second reason for refusal on a planning ground that was capable of being dealt with by condition.
18. In terms of whether the unreasonable behaviour has prevented development that clearly should have been permitted, my appeal decision explains why I consider the development should not be permitted. It follows that the Council has been reasonable in objecting to the proposal in respect of the effect of the proposal upon the openness of the Green Belt and the effect on biodiversity. As such, it has not refused planning permission for a development that clearly should have been allowed.

19. Turning to the matter of unnecessary or wasted expense, I have found the Council acted unreasonably with regard to on-going case management and communication with the applicant. However, the applicant would still have been required to defend the first reason for refusal having regard to the effect on the openness of the Green Belt. Consequently, I am satisfied that this is not unreasonable behaviour that has led to unnecessary or wasted expense in defending the first reason for refusal.
20. Notwithstanding my above assessment, the unreasonable behaviour resulting in part of the second reason for refusal relating whether or not the annex constitutes a separate residential unit has resulted in some unnecessary work for the appellant during the appeal process. A partial award of costs is therefore justified to cover the appellant's expense in contesting the second part of the Council's second reason for refusal.

Costs Order

21. 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 Cheshire East Council shall pay to Mr and Mrs Mather, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the second part of the Council's second reason for refusal in the decision notice regarding whether or not the annex would be capable of operating as a separate unit. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Cheshire East 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 Veevers

INSPECTOR