



Costs Decision

Site visit made on 20 June 2025

by **G Ellis BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 July 2025

Costs application in relation to Appeal Ref: APP/J1915/D/25/3364082

Five Farthings, Redricks Lane, Sawbridgeworth, CM21 0RL

- 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 Stephen Demetriou for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for demolition of garage and part demolition of house. Construction of two storey and part single storey rear extensions, alterations to roof form to facilitate loft conversion, including raising the roof height, front and rear facing dormers and front gable. Infilling of front elevation. Alterations and additions to fenestration, doors and cladding. Alteration to first floor front terrace. New pitched roof to replace flat roof on single storey front projection.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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's position is that the appeal was unnecessary on the basis that the Council failed to give due regard to the fallback as a material consideration. Reference is made to caselaw¹ and it is suggested that the Council erred in law by dismissing the fallback because there was no lawful development certificate for the alternative development.
4. A fallback can be a material consideration. The caselaw establishes that a fallback has to be a real prospect. Thereby, there is a possibility of the development taking place, not just a theoretical scenario. It is for the decision maker to exercise their judgement as to whether that would be the case based on the particular circumstances, and the weight to be attributed.
5. Whilst the establishment of a genuine fallback does not necessarily require a lawful development certificate for that development, as suggested by the Council, it is for the applicant to provide the information to support their case. The Mansell judgement does advise that, in some cases, that degree of clarity and commitment may be required.

¹ Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities & Ors [2009] EWCA Civ 333 (and Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314.

6. In this case, a number of scenarios comprising various extensions were presented as schematic plans. It is, as noted by the Council, not their role as part of a householder planning application to assess or determine what might be achievable under permitted development rights. The permitted development rights for each element are subject to various conditions and limitations, and compliance can only be formally determined through an application for a lawful development certificate.
7. The Council, in its officer's report, acknowledged the permitted development scenarios but presented a reason why they should not be taken into account and gave them no weight. While the rationale for directly rejecting the fallback does not align with the caselaw, it does not follow that the Council would have agreed that the fallback(s) represent a real prospect, would be more harmful or ultimately would have resulted in the application being approved.
8. The Council had found that the proposal would be inappropriate development and that there would be a loss of openness, which in accordance with paragraph 153 of the National Planning Policy Framework is to be given substantial weight, and therefore very special circumstances would need to be demonstrated to justify the grant of planning permission. Thereby, even if the fallback had been considered, the Council may not have given it sufficient weight to overcome the Green Belt harm.
9. Although I have reached a different overall conclusion from the Council and allowed the appeal, this does not mean that it acted unreasonably in refusing the planning application. It is also relevant that the PPG is clear that it is for the decision maker to decide what weight is to be given to the material considerations in each case.
10. Therefore, while the Council did not assess the fallback, for an award of costs the behaviour would have had to have resulted in unnecessary or wasted expense in the appeal process. As such, it has not been clearly demonstrated that further consideration of the fallback position would have led the Council to a different decision, thereby avoiding the need for an appeal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

G Ellis

INSPECTOR