The Planning Inspectorate

Costs Decision

Site visit made on 10 October 2023

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2023

Costs application in relation to appeal ref. APP/L3245/D/23/3327008
West Lodge, Adcote, Little Ness, Shrewsbury SY4 2JU

- 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 & Mrs M Warner for a full award of costs against Shropshire Council.
- The appeal was made against the refusal of planning permission for "*Extension and Conversion of existing double garage to form live-in carer's accommodation including associated hard paving*".

Costs decision

1. The application for a full award of costs is refused.

Reasons for the costs decision

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. 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 costs application seeks a substantive award against the local planning authority. The substantive case made includes some of the topics that appear in paragraph 049 of the Guidance in the main section headed *Behaviour that may lead to an award of costs against appeal parties*.

5. The applicants submit that the Council has behaved unreasonably by: (a) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; (b) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; (c) failure to produce evidence to substantiate each reason for refusal on appeal; (d) not working proactively during the application's consideration; (e) refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead; (f) acting contrary to, or not following, well-established case law and established appeal decisions; (g) not determining similar cases in a consistent manner;

(h) incorrect dimensions stated in the officer's report upon which the recommendation was based; and (i) the Council's incorrect assertion regarding as to when someone should submit an application regarding their specific health conditions at a particular time.

6. Central to the appeal case was the ancillary nature of the accommodation proposed and in particular whether the Council had been reasonable in treating the development as being tantamount to the creation of a new dwelling, even though the submitted householder application form made it clear that the scheme was for an annexe and a planning condition could be imposed to restrict the future use of the building. Whilst well-established case law was not put before me, I was referred to other decisions made by the Council and other appeal decisions.

7. The Council had to be satisfied that if the building was to be restricted, it would need to be of a reasonable size, scale and design for the ancillary use in question. This required a planning judgement to be made on a site specific basis, as had happened with the other cases referred to, particularly bearing in mind the apparent absence of any development plan policies which specifically cover the creation of residential annexes. Even though, as a matter of fact and degree and on balance, I reached a different view to the Council on this key matter, it was not unreasonable for the Council to consider that the building as extended would be too large to be an annexe and I consider that the officer's report substantiated its position adequately.

8. All in all, I was satisfied that overdevelopment adversely affecting the character and appearance of the original dwelling, the site and the surroundings would not arise. It is well established that the resolution of such issues involves a matter of judgement. Having found that the scheme was tantamount to a new dwelling, the Council was entitled to find that the increase in floor area would amount to overdevelopment. Although I did not agree with the Council, sufficiently robust evidence was put forward in the decision notice and the officer's report to show that the Council did not apply its judgement in an erratic or unreasonable manner.

9. In general terms, the Council's reason for refusing planning permission did not lack logic, substance or objectivity. It was supported by relevant development plan policies. The accusation that the Council did not work proactively during the application's consideration is misplaced. Pre-application advice was given before the refusal of an earlier application and insofar as I can tell, the Council did not totally disregard the further justification and the appellants' personal circumstances that accompanied the appeal application. The Council simply afforded these factors more limited weight in the overall planning judgement.

10. Thus, the applicants have not clearly demonstrated unreasonable behaviour in respect of points (a) to (g) inclusive as set out in paragraph 5 above.

11. With regard to (h), the Council may well have erred with its reference to a ridge height "*of approximately 8m*". However, I covered this matter in detail in paragraph 9 of my appeal decision. As I concluded there, I do not believe this incorrect measurement was ever seriously considered in the main reasoning for the decision. Turning lastly to (i), it seemed reasonable to me that the applicants should plan for and anticipate their future health needs. They are clearly in the best position to do so, including the timing and nature of any care options. That does not mean the Council was wrong to point out that the

potential level of care that one day may be needed is not required currently or to favour adaptations to the existing dwelling and/or to the existing garage building to achieve a more modest annexe.

12. Thus, the applicants have not clearly demonstrated unreasonable behaviour in respect of points (h) and (i) as set out in paragraph 5 above.

13. The Council's approach to the available facts did not fully match any of the types of behaviour listed in the Guidance that may give rise to a substantive award against a local planning authority.

14. This application for costs falls short of demonstrating that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has occurred. An award of costs is not therefore justified.

Andrew Dale

INSPECTOR