



Costs Decision

by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 21/10/2024

Costs application in relation to Appeal Ref: CAS-03641-K0R6R7

Site address: 31 Penrhyn Drive, Gwersyllt, Wrexham, LL11 4LY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
 - The application is made by Mrs Stacey Griffiths for a full award of costs against Wrexham County Borough Council.
 - The appeal was against the refusal of planning permission for the removal of a previous building (garage) and build annex in its place.
 - A site visit was made by the Inspector on 17 September 2024.
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Decision

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

Procedural Matter

2. The Council did not respond to the applicant's claim for costs.

Reasons

3. Section 1.2 of the Development Management Manual Section 12 Annex: Award of Costs ('The Annex') advises that an award of costs may only be made where one party has behaved unreasonably, and that unreasonable behaviour has led other parties to incur unnecessary or wasted expense. Substantive awards may be claimed where the unreasonable behaviour relates to issues of substance arising from the merits of the appeal or application.
4. The applicant's claim is made on substantive grounds that the Council did not consider the application as submitted but on the basis of a hypothetical future use and assessed it against irrelevant policies or guidance. It prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations including by acting contrary to, or not following, well-established case law and by refusing permission on a ground clearly being capable of being dealt with by way of condition.
5. As the Council has not provided a response I have taken into account its officer report. This report sets out the planning history of the appeal site including a successful application which had been made for a certificate of lawfulness (the LDC) under

reference P/2020/0894 in relation to the provision at the appeal site of an outbuilding for the dwelling's incidental use, of similar scale and position as the appeal building.

6. Notwithstanding that the Council had recently dealt with a separate application for a certificate of lawfulness for use of the appeal building as an annexe, it is for the applicant to decide the basis on which they are seeking planning permission and to formulate a description accordingly. The planning application form as submitted indicated that permission was being sought for the removal of a previous building (garage) and to build an annex in its place. The planning application was not accompanied by any cogent evidence that the development was a use of an existing building. Given the nature of the application and the location of the appeal building, I do not consider it was irrational that the Council had, when assessing the spatial effects of the development on the living conditions of neighbouring occupiers, taken into account the guidance contained within the Council's adopted Supplementary Planning Guidance Note No.20 'House Extensions' (LPGN 20) and Supplementary Planning Guidance Note No.21 'Space Around Dwellings' (LPGN 21).
7. The application form confirmed that the annexe was lived in by the applicant's father. However, in contrast to the appeal decision brought to my attention by the applicant, the planning application was not supported by any detailed statement setting out the use of the building or its functional relationship with the applicant's dwelling. I recognise that there is extensive caselaw which sets out matters which influence consideration of whether separate living accommodation constitutes a separate use or different planning unit or is part and parcel of, or an ancillary use, to a dwelling as an annexe. Notwithstanding the planning history of the appeal site in this case, it nevertheless remains the position that a detailed assessment of the particular characteristics and circumstances of a development will be necessary in most cases to reach a definitive view. There is no indication in the officer report that any detailed assessment was undertaken by the Council in relation to the appeal proposal. Nevertheless, whilst it ostensibly also reached a view on the merits of the development as a separate dwelling, the officer report indicates that the Council assessed the development on its merits as an annexe, evidenced for example, by its conclusions in relation to parking requirements.
8. The Council's conclusions that the development failed to meet the requirements of Wrexham Local Development Plan (LDP) Policy DM1 in relation to its asserted overbearing effects on neighbouring occupiers are related to the building's location within the appeal property's garden and its relationship with adjoining dwellings. The imposition of any planning condition would not to my mind have addressed those concerns.
9. Nevertheless, given that the applicant had only recently applied for the LDC and that a building of similar scale was in situ, I consider the prospect that the appeal building would be retained for purposes incidental to the use and enjoyment of the dwelling was likely in the event that the planning application for an annexe did not succeed. Whilst not specifically referred to by the applicant at the application stage, the LDC was therefore a material consideration as a fallback position. In concluding that the development would be harmful, the Council raised no concerns other than in relation to the development's spatial effects and there is no evidence before me that the use of the building as living accommodation by a family member, rather than as a home office, would lead to any materially harmful increase in the intensity of the building's use. However, there is no indication in the officer report that the Council gave any genuine consideration to the weight to be attached to the fallback position. Given the similarities in the scale and position of the relevant buildings, I consider that any objective assessment would have concluded that the development's spatial effects are not materially different or any more harmful than the fallback position.

10. I conclude that the Council's failure, in not following well-established case law and to have satisfactory regard to the fallback position set out in the LDC, resulted in an appeal which should not have been necessary. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a full award of costs is justified.

Costs Order

11. In exercise of the powers under section 322C 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 Wrexham County Borough Council shall pay to Mrs Stacey Griffiths the 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 Wrexham County 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.

N Jones

INSPECTOR