



Costs Decision

Site visit made on 15 July 2022

by Philip Willmer BSc Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal Ref: APP/B9506/D/22/3292183

Thorney Down Farm, Black Lane, Thorney Hill, Bransgrove, BH23 8EA.

- 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 Neil and Julia Kitchen for the extension of garage/annexe and use as self-contained annexe (retrospective) partial award of costs against New Forest National Park Authority.
 - The appeal was against the refusal of planning permission for the extension of garage/annexe and use as self-contained annexe (retrospective).
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Decision

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

Reasons

2. The Planning Practice Guidance 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 appellants consider that the local planning authority have acted unreasonably in that: it made unsupported inaccurate assertions about the proposal's impact without objective analysis; it refused planning permission on a planning ground capable of being dealt with by conditions, and; not determining similar cases in a consistent manner.
4. In particular the appellants consider that the Council did not substantiate its finding that the annexe would be tantamount to a new dwelling. Further, it failed to take note of the approach taken by previous Inspectors when considering similar cases, and finally it did explain why the suggested condition limiting the use of the annexe to ancillary accommodation was not acceptable.
5. The Council at 11.5 of the Planning Committee Report sets out its Policy DP37 making it clear that outbuildings will only be permitted subject to them not providing any habitable accommodation. It then found, as I have subsequently done, that the outbuilding had all the necessary facilities for day-to-day living. The officer then took the view, based on this finding, as he/she was entitled to do, that the outbuilding was tantamount to being a new dwelling. In reaching this conclusion it is clear, by reference to paragraphs 11.4 and 11.7 of the Planning Committee Report that, contrary to the appellants assertion, the officer did have regard to the fact that the garage was in use as ancillary accommodation.

6. The Council concluded that the outbuilding contained habitable accommodation and therefore was contrary to Policy DP37. On this basis, it was, to my mind justified, in concluding that the suggested condition would not alone overcome the harm.
7. In each of the three appeal decisions (APP/B9506/D/19/3233644, APP/P9506/D/18/3197277 and APP/B9506/D/19/33224452/APP/B9506/D/19/3224457) put before me by the appellants the Inspectors each concluded, as I have also done in this case, that while the outbuildings provided habitable accommodation, they were not separate planning units. Their use being, for one reason or another, ancillary to the main dwelling. Accordingly, they would not cause harm to the distinctive character of the National Park.
8. The condition, adopted in these cases, restricting the use of the outbuilding as an annexe simply served to reinforce the restricted use identified. I consider that the condition itself was not the sole or main reason in permitting the development.
9. By reference to paragraph 11.8 of the Planning Committee Report I consider that the Council clearly had due regard to the appeal cases referred to. But considered that they did not alter the policy considerations, or its approach taken in respect of this application. Furthermore, notwithstanding the appellants assertions, from the evidence before me, I consider that the Council has taken a consistent approach to its decision making in respect of similar cases.
10. The appellants have reviewed the three further appeals referenced by the Council in its rebuttal statement to illustrate where Inspectors at appeal have found similar outbuilding to be clearly self-contained, (APP/B9506/W/21/3289188, APP/BN9506/C/18/3214572 and APP/B9506/W/18/3216083). While I have noted what both parties have said about these further appeal decisions, as with those submitted by the appellants, they simply serve to illustrate that judgement in each case has been made on the basis of the individual circumstances of each proposal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Philip Willmer

INSPECTOR