
Costs Decision

by **Graham Chamberlain BA (Hons) MSc MRTPI**

Decision date: 14th November 2016

**Costs application in relation to Appeal Ref: APP/J1915/W/16/3155559
Palace House, Winding Hill, Much Hadham, Hertfordshire SG10 6HW**

- 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 A Eastwood for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the grant, subject to conditions, of planning permission for the creation of a first floor within a garage for domestic storage purposes and provision of workshop and lobby area at ground floor.
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Decision

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

Reasons

2. The application for an award of costs was made and responded to in writing. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The application for costs can be summarised as follows. The Council has acted unreasonably by attaching a condition that is unnecessary and more onerous than that applied originally. Moreover, the appeal scheme did not require planning permission and the reason given for the condition on the decision notice is unclear. As such, the imposition of the condition has resulted in an unnecessary appeal.
4. The reason given for the condition on the decision notice could have been more precise. Nevertheless, having regard to the aims and content of the Policy referred to in the decision notice, alongside the Planning Officer's report, I am satisfied the reason for the disputed condition is not so unduly vague and general as to be unreasonable. In fact, I share the view of the Council that some form of planning condition limiting the use of the appeal building is necessary to safeguard the setting of the area.
5. The Council's pre-application advice that planning permission is required for the proposed first floor was given on an informal basis. It was, and is, open to the appellant to test this advice through an application for a Lawful Development Certificate if they consider the appeal scheme does not require planning permission. Rather than follow this cause of action a planning application was

submitted to the Council. There is clearly no fault in pursuing this but nor can there be in the Council determining the application as presented to them.

6. I share the view of the appellant that the condition imposed by the Council went beyond what was necessary to make the development acceptable. This was compounded by the fact that the disputed condition went beyond the scope of the condition originally imposed on the building¹. Nevertheless, the underlining reason for the condition, to safeguard the setting of the appeal site, is sound.
7. Moreover, the application submission has sown some confusion as it was submitted on a householder application form, which implies an ancillary link between the appeal site and Palace House. Whilst this is not the case, the Council's oversight in this respect is understandable and therefore I am satisfied it did not act unreasonably in seeking to secure what it perceived to be an existing ancillary link.
8. It must also be noted that the appeal building and Palace House are currently in the same ownership and thus I am not satisfied that a condition that requires one building to be used ancillary to another would be technically flawed. The contention here is that this is unnecessary, which is a matter of planning judgement. Whilst I don't agree, I do not consider it was unreasonable for the Council to apply its professional planning judgement that an ancillary link is necessary to make the development acceptable.
9. My overall conclusion is that the Council did not act unreasonably in imposing the disputed condition. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Graham Chamberlain,
INSPECTOR

¹ Condition 3 of planning permission 3/0671-86FP