
Costs Decision

Site visit made on 9 August 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 November 2016

**Costs application in relation to appeal ref: APP/M0933/W/15/3095189
The Old Stables, Stainton Court, Stainton, Kendal, Cumbria LA8 0LQ**

- 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 DH Coates for a full award of costs against South Lakeland District Council.
 - The appeal was against the grant, subject to conditions, of approval required under a development order for the change of use of a ground floor B1 (office) to C3 (dwelling).
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Decision

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

Reasons

2. The Planning Practice Guidance 2014 (as amended) (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can either be procedural, relating to the process of an appeal or substantive, relating to the merits of any issues arising from an appeal.
 3. The application for costs was made by the applicants against the Council in relation to the imposition of conditions on a notice confirming that no prior approval was required for a change of use to the ground floor of a converted outbuilding. The applicants believe that the Council acted unreasonably because it failed to substantiate the reasons for imposing the conditions on appeal or demonstrate how the conditions met the necessary tests, as set out in paragraph 206 of the National Planning Policy Framework 2012 (the Framework). Taken together these perceived failings risk an award of costs on substantive grounds.
 4. The Council has chosen not to contest this application and I consequently have no rebuttal statement before me. Although I found that the appeal was not valid, I accept that the way in which the Council dealt with the original application left the applicant with no other option but to appeal against the conditions that were imposed. As laid out in my decision, there was no lawful basis for the imposition of these conditions because the Council stated that no prior approval was necessary. The approach was unreasonable and this alone establishes adequate grounds for a full award of costs.
 5. Even if the Council had granted prior approval and had a lawful basis for the conditions that were imposed, I found that none of them were necessary for
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the reasons laid out in my decision. The ground floor office is clearly a separate planning unit, as acknowledged in the case officer's report which states that its extent was established through the determination of a previous application (Ref: CU/2014/0019). Furthermore, its extent and thus the status of the adjoining, single storey element were confirmed by a subsequent appeal decision (Ref: APP/M0933/A/14/2228341).

6. The Council's appeal statement offered little justification for the imposition of the disputed conditions beyond the common ownership of the two units. More specifically, I find that the Council relied upon generalised planning principles instead of a suitably robust and detailed analysis of the legislative basis for its decision-making. This not only related to the technical provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) but also the statutory tests set out in paragraph 206 of the Framework. As such it failed to adequately substantiate the reasons for each of the conditions on appeal.
7. Given the above, I conclude that unreasonable behaviour resulting in unnecessary expense has been demonstrated and that a full award of costs is therefore justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 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 South Lakeland District Council shall pay to Mr and Mrs DH Coates, the costs of the appeal proceedings described in the heading of this decision.
9. The applicants are now invited to submit to South Lakeland District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Roger Catchpole

INSPECTOR