

Costs Decision

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 24 November 2016

**Costs application in relation to Appeal Ref: APP/H1515/X/16/3149183
Chivers Farm, Swallows Cross, Wyatts Green Road, Wyatts Green,
Brentwood, CM15 0ST**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr D Keeble for a full award of costs against Brentwood Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for a two-storey front extension.
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Decision

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

Reasons

2. The costs application was made on 18 July 2016, as part of the applicant's final comments on the appeal. The Council responded in writing on 1 August 2016.
 3. The Planning Practice Guidance (PPG) 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.
 4. The Planning Support Statement submitted with the LDC application referred to a letter from the applicant's agent to the Council dated 12 December 2014. That letter set out the applicant's argument as to why a s52 Agreement dated 10 February 1989 did not remove permitted development rights granted by Order since the repeal of the Town and Country Planning General Development Order 1988, to which the s52 Agreement referred. The Council's response of 30 January 2015 did not address that argument. Even paragraph 6 of that reply, to which the Council drew particular attention in its appeal statement, missed the point. The applicant had never contended that subsequent delegated legislation had modified the s52 Agreement and the Council's letter did not provide any detailed argument based on the Interpretation Act 1978. The LDC application was nevertheless refused in June 2017, because of the s52 Agreement.
 5. On 2 December 2015, following refusal of the LDC application, but before this appeal was lodged, the applicant's solicitors wrote to the Council confirming and reiterating his argument regarding the s52 Agreement. Despite reminders, no substantive response was received.
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6. The applicant's argument was set out once more in his grounds of appeal, but the Council's appeal statement again missed and failed to address the applicant's case. The Council repeated its view that subsequent delegated legislation had not modified the s52 Agreement; an argument which the applicant never advanced. Contrary to what the Council says in its response to the costs application, it did not clearly explain why it considered that planning permission was required for the proposed extension and, even in that response, the Council did not address the applicant's case on the appeal.
7. I concluded, on the evidence and submissions before me, that the applicant's argument was correct and that an LDC should be granted. The fact that I disagree with the Council does not in itself make the Council's position unreasonable. However, having regard to paragraph ID 16-049 of the PPG, the Council's failure to address the applicant's central argument, posed and reiterated over a long period of time, and the Council's failure to produce evidence or submissions to properly substantiate its position, does amount to unreasonable behaviour. That unreasonable behaviour led to the applicant having to pursue an appeal which should not have been necessary. 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 Brentwood Borough Council shall pay to Mr D Keeble, 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.
9. The applicant is now invited to submit to Brentwood 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.

J A Murray

INSPECTOR