

Costs Decision

Site visit made on 30 January 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 9 February 2017

**Costs Application in relation to Appeal Ref: APP/X1545/X/16/3151073
32 Wembley Avenue, Mayland, Chelmsford CM3 6AY**

- 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 Chris Parker against Maldon District Council.
 - The appeal was against refusal of a Lawful Development Certificate relating to the siting of a mobile home in the garden of the dwelling house for use as additional accommodation to the main house.
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Decision

1. The application for a full award of costs is allowed. See formal decision and Costs Order below.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 3. In support of the application for costs it is contended that the LPA had been provided with sufficient clear and unambiguous information at the time of the application. Initially the LPA had indicated that a LDC could be issued. It is then indicated that their objections had only been raised at the very end of the statutory period. It is stressed that if the LPA had considered that further information was required it should have had regard to section 39(9) of the 1990 Act. It is also contended that it failed to follow the Planning Inspectorate guidance with regard to LDC appeals by not having constructive discussions with the applicant prior to making a decision as to whether a LDC was justified.
 4. In any case it is further contended that the LPA failed to take into account the further information submitted was unreasonable, particularly bearing in mind that it was the case officer's initial view that the LDC should be issued. The Council's reliance on such reasons relating to the weight and permanence of the unit is considered to fly in the face of established planning principles and the refusal on that basis was unreasonable. It is argued that the LPA failed to apply the test of 'on the balance of probabilities' thereby putting the Appellant to the unnecessary expense of an appeal.
 5. In response the Council disputes that it has acted unreasonably and refers to PPG and, that parties generally meet their own expenses. The Council indicates that it did not consider that the submitted information was sufficient
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to determine whether or not planning permission was required for the proposed unit of accommodation. In particular it is stressed that there was no indication that the unit had the structural integrity to be moved and, therefore, that it did not meet the 'portability' criterion of being a 'caravan'. It is contended therefore that, at the time of determining the application insufficient evidence had been submitted on which a decision could be made.

6. The Council indicates that it sympathises with the costs, staff time and travel expenses caused by the submission of the appeal but stresses that it has a duty to ensure that the proposal accorded with the legislation under section 192 of the 1990 Act. In this case it was considered that due to lack of information on the movability of the structure and how it would relate to the main dwelling it considered that it was unable to meet the requirements of the legislation. In referring to a previous appeal it is contended that the Appellant failed to quote a fundamental part of the decision which referred to the distance, in that case, of the caravan from the main house.
7. Having considered the full submissions of this costs application and taking into account my findings in the appeal against the refusal of the LDC, I consider that in general a Council is entitled to reach a decision on the basis of the application submissions. It could be argued that the additional information should have been submitted at that time. However, it is also evident that up until the very last minute, what had been indicated to be a recommendation of approval was then reversed. It was this reversal which then led to the need for further submissions to reinforce the then applicant's case.
8. In the overall circumstances of this case, therefore, I consider that the Council behaved unreasonably. That unreasonable behaviour related to the manner in which they dealt with the initial application and refused to take into account the later information. This latter submission was in response to the Council's then intended reasons for a recommendation against the issue of a LDC and, taking into account the chronology of the application, I find it difficult to understand why the Council did not take the further submissions into account. It may well be that this was due to pressures of time relating to statutory periods but the fact is that the information was submitted before the decision was made and with a specific request that it be placed before the Planning Committee.
9. If this had been the case then, based on the evidence, there would have been little doubt or reason as to why a LDC could not, or should not, have been granted. Whilst understanding the pressures that LPAs are under in having to reach decisions within the relevant periods, I find their actions, in this particular case, in not taking the later information into account to be unreasonable. It was this later action (non-action) that led to a refusal and the appeal being made by the Appellant and the start of the appeal process.
10. I conclude, therefore that the Council's unreasonable behaviour, in firstly seeming to indicate a a LDC would be issued and then, secondly, in not considering all of the information submitted was directly responsible for the appeal process. The Council's unreasonable actions clearly led to the need for the appeal and this resulted in unnecessary expense for the Appellant. The application for costs, therefore, succeeds and I set out the formal decision and costs order below.

Formal Decision and Costs Order

11. I allow the application for costs in full and, in exercise of the powers in section 250(5) of the Local Government Act 1972 and Schedule 6 to The Town and Country Planning Act 1990 and all other powers enabling me in this behalf, I order the Maldon District Council to pay to Mr Chris Parker the full costs of the appeal proceedings relating to this appeal.

The costs are to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned the appeal described above.

Mr Chris Parker is now invited to submit to Maldon 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. The enclosed guidance note describes how to apply for a detailed assessment by the Supreme Court Costs Office if the parties cannot agree the amounts.

Anthony J Wharton

Inspector