

Costs Decision

Site visit made on 30 January, 2017

by C. Jack, BSc (Hons) MA MA(TP) MRTPI

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

Decision date: 1st March, 2017

Costs application in relation to Appeal Ref: APP/D3830/W/16/3163068 Garage Block, Street Lane, Ardingly, RH17 6UA

- 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 Mark and Judith White for full award of costs against Mid Sussex District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the conversion and alteration of existing store building to create a detached 2-bedroomed house.
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Decision

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

Reasons

2. 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. The application for costs essentially relied on behaviour by the Council in processing and failing to determine the application. Specifically, that the Council advised it intended to issue a delegated refusal leaving the applicant insufficient time to seek Councillors to call-in the application to be determined by the Planning Committee, and that the Council had belatedly raised concerns relating to the established use of the site, leading the applicants to prepare an application to establish the lawful use of the site. It was argued that the applicants incurred unnecessary or wasted expense relating to professional fees in preparing a re-application in order to seek a decision by the planning committee and the application for a Certificate of Lawful Use. Furthermore, it was argued that if the re-application was approved the applicants will have had to unnecessarily bear the cost of the appeal. The second part of the claim, relating to the lawful use application, was subsequently withdrawn.
 4. The Council advises that, had its officers been minded to recommend approval for the scheme it would have been necessary to report it to the planning committee with a positive recommendation, essentially because the proposal represented a departure from the development plan. The case officer advised the applicants that the matter would be reported to committee with a positive recommendation, subject to no objections being received from the Council's ecology consultant. By this time, no call-in requests had been received from councillors, and the period for doing so, as set out in the Council's Scheme of Delegation to Officers (the Scheme), had passed. The Council therefore did not
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- act unreasonably by seeking to process the application in accordance with the Scheme. Even if councillors had been approached by the applicants, they would not have been obliged to act upon a request for call-in, and indeed planning reasons would have been required for doing so as well as the support of another councillor. Moreover, had a decision had been taken by the committee; it cannot be known whether the outcome would have been favourable to the applicants. Furthermore, the content of the Scheme is not a matter for me.
5. The apparent delay in receipt of advice from the Council's ecology consultant is regrettable, albeit the applicants accept that this was beyond the case officer's control. However, given that the Council had advised that a positive recommendation to the committee would be subject to no objections from that consultant, it was not unreasonable for the Council to reach a planning judgement in accordance with the advice it, belatedly, received, and for the case officer to then recommend refusal. This is particularly the case given that, on the evidence before it at the time, the Council considered the site to be wholly classified as ancient woodland. A delegated refusal would have been in accordance with the Scheme, notwithstanding that this would have been frustrating for the applicants having had to wait for the ecology advice, and having anticipated consideration by the committee. However, there is no significant evidence before me that the application was not 'properly considered' by the Council.
 6. It would have been entirely a matter of choice for the applicants to submit a re-application, with or without awaiting the determination of the appeal, and the costs of doing so were not directly related to the appeal. The choice to submit a re-application before the outcome of the appeal would have been made in the knowledge that if the appeal subsequently succeeded the re-application could seem irrelevant and unnecessary. The costs associated with making the re-application must have been borne on the same basis, and cannot be considered unnecessary or wasted expense in the appeal itself. The PPG sets out that costs that are unrelated to the appeal are ineligible and that costs awards cannot extend to compensation or indirect losses. Moreover, I have not been advised of any determination of a re-application, and it has therefore had no significant bearing on the outcome of the appeal, which I determined on the merits of the scheme and evidence before me.
 7. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense in the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is therefore not justified.

Catherine Jack

INSPECTOR