



Costs Decision

Site visit made on 20 March 2017

by **Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

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

Decision date: 27 March 2017

Costs application in relation to Appeal Ref: APP/R5510/X/17/3167037 94 Marvell Avenue, Hayes, Middlesex UB4 0QT

- 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 Miss M Grewal for a full award of costs against the Council of the London Borough of Hillingdon.
- The appeal was made against the decision of the Council to refuse to grant a certificate of lawful use or development [LDC] for the erection of a residential outbuilding.

Formal Decision

1. I refuse the application for an award of costs.

The case for both parties

2. The case for both parties is set out in writing and since there is a public record of those submissions I do not propose to rehearse them here.

Reasons

3. The Planning Practice Guidance [the Guidance] 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. In paragraph 4 of my main decision I have identified the key question set out in the Guidance that the decision maker needs to ask when dealing with this type of proposal. In its response the Council has also drawn attention to the Guidance insofar as it says: "*Planning merits are not relevant at any stage...*"¹. In that context it is hard to disagree with the Council's view that the grounds on which the application for costs is made are misplaced, or what the Council has described in terms as being: "*...confused and without merit*". I share the Council's view that the examples cited² solely relate to planning merits.
5. Notwithstanding the above the complaint appears to be that the Delegated Report failed to adequately assess the evidence provided, including what is described as "*a detailed Supporting Statement*" that "*carefully considered what equipment and facilities [the Appellant] wanted in the outbuilding (and their dimensions) and provided a layout plan*". However, as noted in paragraph 8 of my main decision, it was not until appeal stage that a detailed list of equipment was provided and their dimensions given. I have also given reasons why there is a tension between that list, and the size of the required areas, and the layout plan. This suggests that the information that accompanied the LDC application

¹ Source: paragraph: 009 - Reference ID: 17c-009-20140306.

² The application relies on the first and third bullet-points in paragraph: 049 Reference ID: 16-049-20140306, namely: "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations" and "vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis", respectively.

- failed to describe the proposal with sufficient clarity and precision, as required by the Guidance, such that the Council's decision was not unreasonable. In my view it was too focussed on other examples/appeal decisions at the expense of actually explaining why such a large outbuilding was reasonably required.
6. I suggest, perhaps as a response to the supporting statement, the Delegated Report fell into the same trap and focussed on 2 contrasting appeal decisions, rather than looking at what was being proposed. However that is not to agree with the Appellant's submission that the Report failed to consider the proposed uses. The Appraisal section of the Report expressly does so and, contrary to the Appellant's claim, relates the floorspace of the outbuilding to the dwelling.
 7. I have given reasons in my main decision why in this instance, based on the limited information before me, the footprint of the original dwelling does appear to equate to the footprint of the dwelling on the date the application was made. In the circumstances of this appeal reliance on the footprint of the original dwelling house was not therefore unreasonable but, going forward, the Council should not rely on that aspect of the Hitherbroom Road decision. This point is explained clearly in the Cornwall Road appeal decision and I agree.
 8. The second appeal decision referred to in the Delegated Report is perhaps of greater relevance. The summary of it in the Delegated Report merely says the proposed building would have a larger area than the ground floor area of most terraced houses in the neighbourhood. It does not say it would be double the footprint of the original house, which is what the Inspector in the Cornwall Road decision claims it said. However I note that he too was not given a copy of the decision. This is akin to a game of Chinese Whispers and underlines why it is important to focus on primary documents rather than a partial summary. So whilst I acknowledge the Inspector in the Cornwall Road decision said it was plainly not comparable it is not clear to me whether that criticism applies here³.
 9. So, in short, the Council was wrong to focus on original footprint and does need to change this aspect of its approach going forward. However in this particular case the Appellant has not shown that the floorspace that existed on the date the application was made was materially different from the original floorspace and so there was no error. The Appraisal in the Delegated Report otherwise looks at the use and the physical attributes of the proposed outbuilding, which is in line with the approach required by the Guidance. The Appellant has not suggested that the Council acted contrary to, or did not follow, well-established case law, insofar as it is reflected in relevant appeal decisions, which is perhaps the most relevant example of unreasonable behaviour in the Guidance⁴. In the circumstances I find no basis to find there has been unreasonable behaviour.

Conclusion

10. For the reasons identified above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Pete Drew

INSPECTOR

³ If the proposed outbuilding in the Bourne Avenue appeal was larger than the ground floor area of the house then that would have been more than 100 %, which appears to be broadly comparable to the 120 % figure here.

⁴ See bullet-point 5 in paragraph: 049 Reference ID: 16-049-20140306.