
Costs Decision

Site visit made on 15 May 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 14 June 2017

Costs application in relation to Appeal Ref: APP/Z3635/X/16/3164470 50 Hogarth Avenue, Ashford TW15 1QA

- 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 and Mrs Wade for a full award of costs against Spelthorne Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a development described as 'Loft conversion with dormer, single storey rear extension and garden outbuilding'.
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Decision

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

The submissions for Mr and Mrs Wade

2. The application is for a full award of costs. In essence it is claimed that the Council's actions, and lack of co-operation before the appeal, resulted in the refusal of the lawful development certificate (LDC) application as well as an appeal, which could have been avoided. The applicants also claim that the reasons for refusal are unreasonable when other similar applications have been granted. In addition, an award of costs is sought, in effect, to make an example of the Council so that their conduct can be condemned and future applicants can be treated in the correct way.

The response by Spelthorne Borough Council

3. The Council state that the application was determined in accordance with their adopted framework for decision making. It was properly assessed against the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) and found lacking. All of this was fully explained in the Officer's report and there was no evidence from the applicants to suggest that the decision should have been otherwise.

Reasons

4. The Planning Practice Guidance (the Guidance) advises that 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.
 5. The application for a full award of costs is based partly on the claim that the Council has been unreasonable by refusing the application for a LDC which accords with the GPDO. I consider that the Officer's report set out all the
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- information before the Council and the appropriate legislation. It also made reference to relevant case law. It contained a comprehensive discussion of the facts and for these reasons it is my view that it fulfilled its requirement to demonstrate how the Council reached its decision and in particular, how it expressed its reasons for refusal. The 'Certificate of lawful use or development appeals: Procedural Guide' (PG) sets out that reasons for refusal should be clear and comprehensive. It also reiterates the advice in the Guidance that the onus of proof is firmly on the applicants to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate.
6. The applicants refer to paragraphs 186 and 187 of the National Planning Policy Framework (the Framework) to support their argument that Councils should approach decision taking in a positive way and that they should look for solutions rather than problems. It is my view that this advice is in regard to the role played by Councils when making decisions about development as it refers to sustainable development in both paragraphs. As I pointed out in my decision (paragraph 5), the issue of planning merits is not relevant to LDC applications, as these are concerned with the lawfulness of development. Decisions are made solely on the facts involved in each case. However, I accept that the advice in the Framework is useful in a general sense.
 7. It is the PG that emphasises the importance of continued discussion about LDC applications¹ and therefore it may have been helpful if the Council had contacted the applicants to discuss the eaves height. The Council has not commented on this point in their response, or indeed what happened post decision from their perspective. However, their failure to discuss the application, whilst not helpful in that it did not follow the PG, does not amount to unreasonable behaviour, only that the PG was not followed.
 8. With regard to avoiding the appeal, the PG is quite clear. If an applicant thinks amending their application would overcome the reasons for refusal 'they should make a fresh application'. The applicants did not do that in this case. Instead, it appears the Council were prepared to offer informal advice, when approached, on any sketches submitted by the applicants. Whilst this action is not envisaged in the PG, it seems to me that the Council's willingness to engage demonstrates reasonable behaviour in terms of avoiding the appeal; even if the applicants did not accept the terms of engagement.
 9. With regard to the second claim, I discussed this matter in paragraph 18 of my decision. The Council's action in determining this LDC application cannot be criticised on this point as the circumstances pertaining to each LDC application will be different. Certificates, where granted, only relate to development as described on the date of each application. I therefore find that the Council's behaviour was reasonable in reaching a well-founded decision on the applicants' application.
 10. With regard to the third claim, I have noted the applicants 'urge' me to make an example of the Council. However, the Guidance is quite clear about the aim of the costs regime. This is to encourage positive behaviour. It is not punitive and therefore I give little weight to this argument.

¹ Paragraph 1.4

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

D Fleming

INSPECTOR