

Costs Decision

Site visit made on 5 July 2017

by George Arrowsmith BA, MCD, MRTPI

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

Decision date: 20 July 2017

Costs application in relation to Appeal Ref: APP/T3725/D/17/3175591 Site at 10 Meadow Close, Leamington Spa, CV32 7AS

- 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 Tekin Hasan Moustafa for a full award of costs against Warwick District Council.
 - The appeal was against the refusal of the Council to grant planning permission for a first floor extension.
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Decision

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

Reasons

2. The appellant does not specify whether this is an application for a full or a partial award of costs. He leaves it to the Inspectorate to decide the matter. In order that the appellant should not be disadvantaged I have treated this as an application for a full award of costs.
3. The Government's Planning Practice 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. The appellant produces a considerable amount of information in support of his application but does not specifically relate this to the types of unreasonable behaviour that the Planning Practice Guidance says can lead to an award of costs against a local planning authority. Nevertheless, it appears that the two examples of unreasonable behaviour identified in the Guidance that relate most closely to the application are:

"refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal"

and

"failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances"

5. The appellant recognises that the Council have entered into pre-application discussions but is dissatisfied at the way these were conducted and at their outcome. Much of the appellant's concern relates to the compromise solution which he says was offered by council officers. In essence, he considers that the compromise would not have provided an adequate standard of accommodation. The Council's responsibility is however to determine the acceptability of an applicant's proposals. In pre-application discussions, this can extend to indicating the limits of what will be accepted. It does not extend to developing proposals that meet an applicant's need. There is often a conflict between an applicant's aspirations and what a Council considers acceptable in planning terms but this does make the Council's position unreasonable.
6. It is clear from the documents supplied that there has been confusion during the application process. After reporting on a meeting held at the Council's offices on 20 September 2017, the Council's response to the application for costs goes on to say, *"The agent contacted the case officer the following week after speaking to the applicant who misunderstood what had been discussed"*. In responding to this sentence, the appellant says that it is unacceptable for the Council to claim that he and his agent had misunderstood the situation. In fact, the Council have said that the misunderstanding was on the part of the appellant, not his agent. This further misunderstanding indicates what appears to have been a wider difficulty in communication. I do not have sufficient information to attribute blame for this difficulty but none of what is available to me is sufficiently clear-cut for me to conclude that the Council behaved unreasonably during their discussions with the applicant or his agent.
7. The appellant has asked the Council to provide him and the Inspectorate with a written statement of the conversation that took place between him and the case officer during a site visit and a further written statement from an officer he met while seeking pre-application advice. No such statements have been provided. I nevertheless consider that officers would be unlikely to have sufficient recollection to write accurate statements of events that took place some time ago. Whatever was said could be contested by the appellant and views expressed by individual officers are not binding on the Council as a whole. I am satisfied that it is safe for me to decide the application for costs without such statements.
8. Reference is made to plans, which the appellant says were approved in 1990¹, 1996 and 1999 and which he says were similar to those submitted with the current application. The only decision notices that has been supplied to me are dated 1990 and 1996. I have no other evidence of a 1999 permission. Only one set of the plans provided to me has an approval stamp. The stamp relates to building regulations approval rather than to a planning permission and the plan is dated 1991. The details of the extension shown on that plan are different from what is now proposed and the previous approvals were granted many years ago at a time when different planning policies would have been in place.

¹ The appellant's grounds of appeal do not refer to this permission

9. In his costs application the appellant claims that the earlier permissions have been implemented by replacing joists in the roof. This claim was not contained in the grounds of appeal. Even if the claim were to be substantiated, and there are different processes for establishing this, it would not justify granting permission for the different scheme now before me. I am therefore satisfied the Council's behaviour in this respect also was not unreasonable.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

George Arrowsmith

INSPECTOR