
Costs Decision

Site visit made on 25 July 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 21 August 2017

Costs application in relation to Appeal Ref: APP/X0360/X/17/3174006 4 Holmbury Avenue, Crowthorne, RG45 6TQ

- 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 Wokingham Borough Council for a full award of costs against Mrs Rachel Masey.
 - The appeal was against the refusal of a certificate of lawful use or development for the conversion of existing garage to study and utility room.
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Decision: The application is refused.

Reasons

1. The Planning Practice Guidance 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 or wasted expense in the appeal process. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against an appellant. These include where an appellant pursues an appeal that had no reasonable prospect of succeeding.
2. The essence of the Council's case is precisely that the appellant's appeal had no reasonable prospect of succeeding. The Council asserts this on the basis that the appellant was informed from the beginning about a condition imposed upon the planning permission for the residential estate that prevented the use of domestic garages for any other purpose. The Council also asserts that the appellant chose to continue with the appeal after planning permission was granted for the conversion of the garage, and despite repeated warnings that the garage conversion would not be lawful.
3. On any plain reading, condition 6 imposed on the outline planning permission Ref: 19887 is clear on its face that the express permission of the Council is required for the use of domestic garages to properties on this estate for any other purpose. It is therefore obvious that the conversion of the existing garage at the appeal property to a study and utility room would not have been lawful on the date on which the application was made.
4. However, the appellant's decision to continue with the appeal must be viewed in the context of all the information available to her at that time. In undertaking this exercise, I am mindful throughout that the appellant has not

- been professionally represented during this process and that the appellant will therefore have viewed the actions of the Council from the perspective of someone not familiar with the complexities of planning law.
5. The starting point is the pre-application advice received by the applicant which, contrary to the Council's assertion that the appellant was informed from the beginning about a condition imposed upon the planning permission, categorically stated that there were no restrictive conditions on the property. It subsequently transpired that this advice was incorrect but it set the applicant on the path believing that the application had a reasonable prospect of succeeding.
 6. In the event, the application for a certificate of lawful use or development was refused for reasons which I have found to be well founded. It was at this point that the appellant first became aware of the existence of condition 6 imposed on the outline planning permission Ref: 19887. Nevertheless, at the same time, the appellant was also aware that a certificate of lawful use or development for the conversion of a garage had been issued in relation to another property on the estate. Someone with experience in planning law might have been expected to know that, in the context of a certificate of lawful use or development, this does not serve as a precedent and could have no bearing on the outcome. However, the appellant in this case did not have the benefit of that experience and consequently was not aware of that.
 7. The appellant disputes the Council's assertion that it gave repeated warnings that the garage conversion would not be lawful and that the Council would pursue an award of costs should an appeal be lodged against the refusal of the certificate of lawful use or development. Certainly, the extracts from e-mail correspondence provided by the appellant do not support the Council's version of events and the Council has not itself provided copies of the warnings that it says were sent to the appellant. In these circumstances, and with the knowledge that a certificate of lawful use or development had been issued in relation to the property at 8 Leith Close, I consider that the appellant's decision to continue with the appeal was both understandable and reasonable.
 8. The Council also considers that the appellant's decision to continue with the appeal after planning permission was granted for the conversion of the garage amounts to unreasonable behaviour. I do not agree. The planning permission granted was subject to conditions which, from the appellant's perspective, were onerous and compliance with which would detract from the appearance of her property. In my view, the appellant was perfectly entitled to pursue a favourable outcome on the application for the certificate of lawful use or development in the hope of avoiding those conditions. I make no criticism of the appellant for doing so.
 9. Having regard to all the above, I conclude that the appellant has not acted unreasonably in pursuing this appeal and has not caused the Council to incur unnecessary expense in defending its position. It follows that an award of costs is not justified.

Paul Freer

INSPECTOR