

Costs Decision

Site visit made on 20 July 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 25 August 2017

Costs application in relation to:

Appeal Ref: APP/K0425/X/17/3167829

Dingle Dell, Bigmore Lane, Horsleys Green HP14 3UP

- The application is made under the Town and Country Planning Act 1990 sections 174 and 322, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C Burnell for a full award of costs against Wycombe District Council.
 - The appeal was against the decision to refuse in part a Lawful Development Certificate [hereafter "LDC"] for: Erection of a new front porch and erection of single storey extension following removal of existing extension.
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Decision

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

Reasons

National guidance

2. National guidance on awards of costs is set out in the *Planning Practice Guidance* [hereafter "the PPG"]¹. The PPG states that in planning appeals and other planning proceedings parties normally meet their own expenses. All parties are expected to behave reasonably. The PPG 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.
3. The PPG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural, relating to the appeal process or substantive, relating to the merits of the appeal. It provides some examples of the types of behaviour that might be held to be unreasonable, and which may give rise to an award of costs against a Local Planning Authority. These examples include preventing or delaying development which should clearly be permitted, failing to produce evidence to substantiate a reason for refusal and acting contrary to, or not following, well established case law. The list is not exhaustive.

The appellant's costs application

4. The appellant's application for costs is made on substantive grounds. The appellant contends that the Council failed to take into account that the existing

¹ *Planning Practice Guidance* is a web-based resource that was launched by the Department for Communities and Local Government on 6 March 2014. It provides, among other things, national guidance on costs awards, replacing the guidance formerly provided by Circular 03/2009. Its guidance on awards of costs is found in the section titled "Appeals".

rear extension would be removed before the new extension was erected. It failed to make any decision on that particular point and did not address the matter in refusing an LDC for the proposed rear extension. As a result it fundamentally misinterpreted what was being sought which led to an incorrect refusal of an LDC. This prevented or delayed development which should clearly have been permitted and amounted to unreasonable behaviour which has led to the appellant incurring unnecessary expense in pursuing the appeal.

The Council's response

5. In response the Council says that it was fully aware of the removal of the existing rear element as documented in the delegated report, the description of the proposal and the LDC decision itself. The extension was part of the original dwellinghouse and its intended demolition was to be disregarded for the purposes of the permitted development assessment. The Council supported its case by reference to the Technical Guidance² and relevant case law. It took all relevant matters into account and its decision was not misconceived.

My assessment and conclusions

6. In the case it has put forward it is clear that the Council was aware of the intended removal of the existing rear extension. In its LDC decision, for example, the proposal is described as "Erection of single storey extension following removal of existing extension". The Council's case had substance, was supported by evidence and made reference to relevant case law. In my consideration of the appeal I have agreed with the Council's approach. I do not find, therefore, that the Council fundamentally misinterpreted what was being sought leading to an incorrect refusal of an LDC.
7. Neither do I criticise the Council for not making a determination on the removal of the existing extension separately. A reasonable interpretation of the description given on the application form ("demolition of existing rear extension and erection of new rear extension") would be that the works were to be comprised in a single operation to erect a new extension of which the demolition of the existing extension formed a part. It was less than clear that the appellant was seeking a determination on the demolition issue as an alteration in itself.
8. Even if the Council had determined that issue separately I cannot see that this would have avoided the need for the appeal. The Council would still have assessed the new extension against the original dwellinghouse of which the rear element (demolished or not) formed a part. Irrespective of the lawfulness or otherwise of the intended demolition the Council's decision to refuse an LDC for the proposed extension would, in all probability, have been the same.
9. For these reasons I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Susan Wraith

INSPECTOR

² The Council referred to "Permitted development for householders, Technical Guidance (2016)" which was updated in 2017.