
Costs Decision

Hearing held and site visit made on 15 August 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 13 September 2017

Costs application in relation to Appeal Ref: APP/G3110/X/16/3166148 57 Headley Way, Headington, Oxford, OX3 7SR

- 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. M. Armitage ("the Applicant") for a full award of costs against Oxford City Council ("the Council").
 - The Hearing was in connection with an appeal against the refusal of a Certificate of Lawfulness of Proposed Development ("the CLPD") for the proposed erection of an outbuilding for use as a garage/store.
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Procedural Matters

1. The Appeal Decision was dated 22 August 2017. I will refer to this as "the Appeal Decision".

Decision

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

The submissions for the Applicant

3. The costs application was submitted in writing.

The response by the Council

4. The response was made in writing.

Reasons

5. The Planning Practice Guidance ("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.
6. It appears from the paperwork that is before me that the Council's approach at the time they determined the application for the CLPD was to ask itself the following questions:
 - a) Was the proposed outbuilding within 2m of the boundary of the garden at No. 57?
 - b) If it was, did the height of any part of the building exceed 2.5m above any adjacent ground level?
7. The answer to both of the questions set out above was "yes" – therefore the Council refused the application for the CLPD.

8. At the Hearing the Council did not maintain this position. They accepted that the correct approach was to measure the height of the proposed outbuilding in the way described in the Appeal Decision. They also maintained that the proposed outbuilding could not be permitted development because of the matters referred to in paragraph 14 of the Appeal Decision.
9. I have explained that when the proposed outbuilding was measured on site its height exceeded the maximum permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO") when measured in accordance with the way explained in paragraph 11 of the Appeal Decision. Accordingly, the proposed outbuilding could not be permitted development.
10. It therefore appears as though the Council reached the correct decision as to whether the proposed outbuilding would be lawful but for different reasons than those explained in my Appeal Decision. I do not consider that the Council's decision to refuse the application for the CLPD amounts to unreasonable behaviour on their part. The problem for the Applicant stems from the fact that the proposed outbuilding had been built outside the parameters laid down by Parliament in the GPDO.
11. I note the Applicant's view that the Council's Delegated Report ("the Report") on the application for the CLPD was not particularly helpful in finding out why they had refused the application. My reading of the Report is that the Council decided the application in the way outlined in paragraphs 6 and 7 above. No-one (including the Applicant or those representing the Applicant) appears to have carried out the measurements which were made at the site visit on 15 August 2017. Had they done so it is clear to me that they would have appreciated that the proposed outbuilding could not be permitted development. The plan¹ submitted with the application for the CLPD is also inaccurate regarding the height of the proposed outbuilding.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Tim Belcher

Inspector

¹ Drawing No. P2.03