

Costs Decision

Unaccompanied site visit made on 1 May 2018

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

an Inspector appointed by the Secretary of State

Decision date: 12 June 2018

**Costs application in relation to Appeal Ref: APP/J3720/X/17/3180179
39 New Street, Shipston-on-Stour, CV36 4EW**

- 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 & Mrs Kevin Webber ("the Applicants") for a full award of costs against Stratford on Avon District Council ("the Council").
 - The appeal was against the refusal of a certificate of lawful use or development ("the LDC") for the removal of wagon doors and a signboard and their replacement with a timber and glazed door & sidelights; replacement brickwork; replacement of two windows within existing openings and formation of three openings with new timber windows.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural Matters

2. The appeal was allowed and a Lawful Development Certificate was granted. The Appeal Decision was issued on the 8 May 2018 ("the Appeal Decision").
3. The costs application was submitted in writing on 15 May 2018.
4. The Council's written response to the Costs application was made on 24 May 2018.
5. The Applicant's written reply to the Council's response was made on 30 May 2018.

Reasons

6. 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.
7. The Applicants' case for an award of costs is set out in the documentation referred to above and need not be repeated in this Costs Decision.
8. The Council refused the application for the LDC on the basis that the proposed materials to be used in the alterations of No. 39 were not of similar appearance to the existing building and therefore the proposed alterations failed to comply with the Condition set out in paragraph A.3(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015.
9. The Council explained in their delegated report that, *"The front elevation shows that a wooden wagon door and signage board would be removed and replaced*

with two window openings at first floor level and a full height door/window combination opening at ground floor along with new areas of brickwork. The materials will therefore change from wood to areas of glazing and brickwork. These materials are materially different to those used in the exterior of the building and as such fail to comply with Class A.3”.

10. I have also had regard to all the other representations made by the Council in the course of the appeal and the costs application.
11. However, it appears to me that the Council’s approach to this matter is incorrect as all the materials to be used in the alterations are of a similar appearance to those already used in the exterior of No. 39. There is no evidence, including my assessment at the site visit, that the materials to be used are not of a similar appearance. Had the Council addressed this issue correctly they would have granted the LDC and the Applicants would not have had to appeal the Council’s refusal to the Secretary of State and incurred the costs of so doing.
12. As explained in paragraphs 13 and 14 of my Appeal Decision I have also had regard to the advice in the Technical Guidance. However, the correct approach in this case was to assess whether the materials to be used in the proposed alterations would be of a similar appearance to those in the existing building at No. 39 and for reasons explained in the Appeal Decision they would be.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

14. In exercise of the powers under Section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Stratford on Avon District Council shall pay to Mr & Mrs Kevin Webber, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. Mr & Mrs Kevin Webber are now invited to submit to Stratford on Avon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Tim Belcher

Inspector