
Costs Decision

Site visit made on 5 August 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Costs application in relation to Appeal Ref: APP/B9506/W/19/3226308

Office Building, Hedge House, Hangersley Hill, Forest Corner, Hangersley, Ringwood BH24 3JW

- 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 and Mrs Peter and Kellie Quinn for a full award of costs against New Forest National Park Authority.
 - The appeal was against the refusal of the Authority to grant prior approval for change of use of office building two new dwellings (Use Class B1(a) 10 1no. residential unit (Use Class C3)).
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Decision

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

Reasons

2. The Planning Practice Guidance (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 applicant claims that the Council has acted unreasonably on grounds which are described as:
 - a) making vague, generalised or inaccurate assertions about the validity and applicability of the condition.
 - b) acting contrary to, or not following well established case law;
 - c) failure to engage in constructive pre-application discussions; and
 - d) failure to issue a proper response to the application.
4. Grounds (a) - (d) above relate to matters prior to the appeal. This is confirmed in paragraph 4.1 of the appellants' rebuttal which states that LPA have acted unreasonably in determining the application.
5. The PPG states that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, albeit behaviour and actions at the time of the planning application can be taken into account.
6. With regard to grounds (a) and (b), the Authority's treatment of the disputed condition within its officer report was brief. Though the applicant does not

consider this to have constituted a proportionate or properly reasoned response to the content of the application, the Authority nonetheless provided a detailed statement for the purposes of the appeal. This included analysis of relevant judgements and appeals, and clearly substantiated the Authority's decision, with which I agreed. I have, furthermore, been provided with no reason to believe that had the Authority provided a more detailed officer report, the appeal would have been avoided, or the case presented by the appellants would have substantially differed. Therefore I conclude that grounds (a) and (b) fail.

7. With regard to ground (c), the decision issued by the Authority was consistent with the advice provided at pre-application stage. Whilst the applicants again indicate that the Authority did not provide a detailed enough response, as in grounds (a) and (b), I see no indication that had the Authority acted differently at pre-application stage, an appeal would have been avoided, or that the applicant's approach to the appeal would have substantially differed. I therefore conclude that ground (c) fails.
8. The decision issued by the Authority did not directly respond to application insofar as it did not directly address the need for, or grant/refuse prior approval. It was nonetheless clear that the Authority considered that Article 3(4) of the Town and Country Planning (General Permitted Development Order) (England) 2015 (as amended) (the GPDO) indicated that, on account of a condition on an existing planning permission, the development was not permitted. Consequently, Class O of Schedule 2, Part 3 of the GPDO was not applicable. I appreciate that the applicants were uncertain over whether the Authority's decision was a decision, and thus sought advice from the Planning Inspectorate on the correct route of appeal. However, in my view the only reasonable interpretation of the Council's response to the application was that it was both a decision, and a refusal. As such I do not agree that the way in which the Authority responded to the application caused any unnecessary or wasted expense within the context of the appeal. I therefore conclude that ground (d) fails.

Conclusion

9. For the reasons set out above I conclude that the Council did not act unreasonably on the grounds claimed by the applicant. As such it has not been demonstrated that the applicant incurred unnecessary or wasted expense in the appeal process. The application for costs is therefore dismissed.

Benjamin Webb

INSPECTOR