



Costs Decision

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 September 2019

**Costs application in relation to Appeal Ref: APP/M5450/X/18/3215344
39 Antoneys Close, Pinner HA5 3LP**

- 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 Vincent Pitt for a full award of costs against the Council of the London Borough of Harrow.
 - The appeal was against the refusal of a certificate of lawful use or development for the use of caravan to be sited within the residential curtilage of dwellinghouse as incidental accommodation associated with the main dwellinghouse.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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 PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice.
3. The PPG also confirms that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or unreasonably defending appeals. Examples of unreasonable behaviour are given and include failure to produce evidence to substantiate each reason for refusal on appeal.
4. The level of detail provided by the appellant with the application was limited. There was a lack of a full description on the application forms but the accompanying document clarified what was being applied for. The Council had used a correct description in its documentation, such as in the Head of Planning's report and the decision notice, referring to the proposed use of a caravan.
5. The Council has however clearly misunderstood the significance of the proposal relating to a use of land for the stationing of a caravan for incidental purposes as opposed to operational development in terms of a construction of a building. The reason for refusal refers to the proposal not conforming to the "tolerances"

of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO), in particular Schedule 2, Part 1 Class E. That class and sub-paragraphs relate to “buildings” and other forms of operational development within the curtilage of a dwellinghouse.

6. The appellant had provided details of the particular caravan proposed, confirmation that it would fall within the statutory definition of a caravan and also that no other operational development would be involved. The limitations on size set out in Class E were irrelevant to the proposal therefore and more details about the caravan were not required to reach a decision. The Council should have considered whether the proposed use would have been a material change of use or not. The appellant’s submissions state that the caravan was intended to provide additional incidental accommodation and no operational development would be involved. The Council would have been correct to consider whether the described use would be incidental to the use of the dwellinghouse as is implied within the defence of the costs application. However the reason for refusal suggests that they didn’t do so.
7. The appellant has referred to case law that related to the issue of whether a use of, in that case a residential annex, would be material. Similar concepts are applicable here. Following the refusal, the appellant contacted the Council to point out their error. The exchange with the Council officer indicates a degree of further confusion. The appellant clearly had little option but to appeal in order to challenge the decision rather than re-submitting with further details or evidence.
8. An example of unreasonable behaviour cited in the PPG is a local planning not reviewing their case promptly following the lodging of an appeal¹ and the Council hasn’t done so in this case. When the appeal was submitted, the appellant provided an example of another similar Lawful Development Certificate appeal that related to the stationing of a caravan for ancillary residential use. The issues in that and the current appeal were very similar.
9. The application was unreasonably refused, that led to the submission of the appeal and the Council did not provide a reasonable defence of their case. 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

10. 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 the Council of the London Borough of Harrow shall pay to Mr Vincent Pitt, 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.
11. The applicant is now invited to submit to the Council of the London Borough of Harrow, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Harwood

INSPECTOR

¹ The PPG refers to refusal of planning permission but the same principle applies