



Costs Decision

Site visit made on 29 August 2019

by **K Stephens BSc (Hons), MTP, MRTPI**

Decision date: 31 October 2019

Costs application in relation to Appeal Ref: APP/Y1945/W/19/3231016 172 Whippendell Road, Watford, Herts WD18 7NA

- 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 Younis Shah for a full award of costs against Watford Borough Council.
 - The appeal was against the refusal of prior approval for a proposed change of use from A1 (retail) to C3 (residential).
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The applicant submits that the Council did not assess the prior approval application separately from the external demolition and extension that have already been assessed and approved under a separate full application. It is also submitted that despite paying a £200 fee and submitting a land registry plan to the Council for the preparation of a Unilateral Undertaking (UU), the Council did not prepare one. The Council also refused the proposal on size and layout grounds which do not need to be considered under Class M and did not heed the advice in a previous appeal decision¹ for a nearby property that included the definition for 'dwellinghouse'.
5. The Council submits that it did consider the prior approval application independently of the other applications on the site and the plans did not match what was seen on site. It says the design is contrary to condition M.2(e) as size and layout are part of design considerations and that it was aware of the referenced appeal decision. The Council acknowledge that the appellant paid a £200 fee and submitted land registry documents for the preparation of a UU,

¹ Appeal ref: APP/Y1945/W/19/3197021 dated 29 June 2018

but that the one was not done as the application was to be refused for other reasons.

6. The Council officer's report refers to unnecessary demolition, but it is not clear what they refer to or exactly what they saw on site. I concluded in my decision that the demolition that had been undertaken for the approved single storey rear extension was not part of the Class M prior approval application. Following on from that, the plans did not show the prior approval residential unit would be larger or that unnecessary demolition would take place. In my view the Council incorrectly applied the criteria in Class M.1.
7. The Council went on to consider relevant conditions. However, the Council failed to prepare a UU for the appeal, for which the applicant had paid the necessary fee to the Council expressly for this purpose. The Procedural Guide: Planning Appeals England (August 2019) requires a duly executed and certified copy of the UU to be submitted at the time of making the appeal, or within 7 weeks from the start date. I find the Council acted unreasonably in this regard and forced the applicant to make an appeal. Whilst a duly executed UU was submitted during the determination of the appeal, this was only submitted at my instigation.
8. With regards design or external appearance, I find that the Council had not properly considered the definition of 'dwellinghouse' including the findings in the referenced appeal decision for a nearby property and indeed the GPDO itself. Size of the proposed residential unit is not a requirement for complying with the condition. Furthermore, the external dimensions of the proposed unit do not extend beyond the external dimensions of the existing building.
9. Taking all of the above into account, I find the Council acted unreasonably in wrongly concluding the proposal was not permitted development and that it did not comply with the associated conditions and did not execute the UU for which the applicant had paid the Council for. I therefore conclude that unreasonable behaviour, resulting in unnecessary and wasted expense in appealing the Council's decision, 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 Watford Borough Council shall pay to Mr Younis Shah, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Watford Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

K Stephens
INSPECTOR