
Costs Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2019

**Costs application in relation to Appeal Ref: APP/W4705/X/18/3217784
73 St. Margarets Avenue, Bradford BD4 9BE**

- 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 Derek Somma for a full award of costs against City of Bradford Metropolitan District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a garage, conservatory and small porch.
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Decision

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

Reasons

2. The Applicant is seeking a full award of costs in relation to the Council's perceived unreasonable behaviour in refusing to grant a Lawful development certificate (LDC).
3. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. Paragraph 049¹ of the PPG states 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. Examples include: preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
5. The Council refused the application because on the balance of probability, based upon the evidence submitted and records held by the local planning authority, it did not consider that it had been conclusively demonstrated that the application buildings had been in situ for a period of more than four years. The Council Planning Officer's report notes that the application was accompanied by five signed letters from neighbours confirming that the buildings had been in place for more than four year. However, it goes on to state that a satellite image dated Sept 2014 shows there to be a car port on the site and not a garage. It was because of this contradictory evidence that they refused the application.

¹ Paragraph: 049 Reference ID: 16-049-20140306

6. I appreciate that the onus of proof in demonstrating lawfulness lies with the applicant. However, if there is no evidence to contradict or make the appellant's version of events less than probable and the applicant's evidence alone is sufficiently precise and unambiguous, a LDC should be granted. In this case the appellant's the appeal submission highlights that the garage is clearly visible in the September 2014 image as it can be seen on the street view image behind the car port. The appellant asserts that had the Council assessed the information correctly, there would have been no contradictory evidence and the development would have been granted the LDC.
7. The Council has subsequently conceded that having further reviewed a printed copy of the September 2014 street view plan, they recognise that there appears to be a garage behind the car port.
8. It is clear from the officer report that it was based on this street view image alone that the Council considered there to be contradictory evidence. It was for this reason that they refused to grant the LDC. Therefore, as suggested by the appellant, had the Council accurately assessed the image, no such contradictory evidence would have been found, and the appeal could almost certainly have been avoided.

Conclusion

9. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that an 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 City of Bradford Metropolitan District Council shall pay to Mr Derek Somma, 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 City of Bradford Metropolitan District Council, to a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR