
Costs Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2020

**Costs application in relation to Appeal Ref: APP/C1570/X/19/3230395
Outlook, Wrights Green Lane, Little Hallingbury, Bishops Stortford, Herts
CM22 7RH**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Uttlesford District Council for a full award of costs against Mr Dean Barclay.
 - The appeal was against the refusal of a certificate of lawful use or development described as 'Two small extensions to the rear, dormer roofs on both rear bedrooms and removing garage door to install a new window'.
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Decision

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

The submissions for the Council

2. The Council submits, notwithstanding that it is common practice for the parties to meet their own costs at appeal, that the appellant has acted unreasonably in pursuing the appeal. In particular, the appellant has pursued the appeal in respect of the extensions when he has conceded this part of the case at appeal. This has cost the Council time and money. It was open to the appellant to submit an LDC application with more evidence rather than an appeal, which could have run concurrently with application UTT/19/1742/FUL that dealt with the extensions.

The response by Mr Barclay

3. The Council have misunderstood the terms of the appeal, which were made clear in paragraphs 8 and 9 of the Appeal Statement. Mr Barclay was advised by the Council's enforcement officer that he would need to appeal. In addition, the Council already had the information that the building was substantially complete, which has now been conceded by them. The Council has not been put to any extra work by responding to the appeal as they would have had to consider any revised LDC application.

Reasons

4. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense or wasted expense in the appeal process.

5. The appellant made it clear from the outset that he was only pursuing the appeal in respect of the dormers and the garage works. This is not only stated in paragraphs 8 and 9 of his Appeal Statement but is dealt with in the presentation of the evidence, the conclusion, especially paragraphs 67 and 68 and in both affidavits. Indeed, the second affidavit dealt solely with the position of the extensions and exhibits the decision letter dated the 11 September 2019
6. I therefore find no unreasonable behaviour in the actions of the appellant in the way he pursued his appeal. From all of his submissions it was abundantly clear that the appeal was only in respect of the dormers and the garage works.
7. Both parties have responsibilities when an application is refused. Whilst it is open to the appellant to lodge an appeal as a last resort, the advice is that he should talk to the Council beforehand. In this case the appellant declares in his affidavit that he spoke to Mr Brown at the Council, who explained that the only reason the LDC was refused was because the foundations had been dug too early for the extensions. As a result of this information, the appellant decided to pursue a section 73 application for the extensions and to confine his appeal to the dormers and the garage works.
8. It is the responsibility of the Council to review their case early on in the proceedings following the submission of an appeal. It would appear from their submissions that this did not occur until the Final Comments stage of the appeal process.
9. I therefore find no unreasonable behaviour in the actions of the appellant in deciding to pursue an appeal.
10. Finally, the appellant could have submitted a revised LDC application limited to establishing the lawfulness of the dormers and the garage works. However, it was not unreasonable of him to choose to appeal instead and such a decision has not caused the Council any additional work. This is because they would have had to review the evidence in the same way that they have responded to the appeal.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

D Fleming

INSPECTOR