
Costs Decision

Unaccompanied site visit made on 25 February 2020

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 4 March 2020

Costs application in relation to Appeal Ref: APP/Q5300/X/19/3235934 193 Hedge Lane, London, N13 5BZ

- The application is made under Sections 195, 322 and Schedule 6 of the Town and Country Planning Act 1990 and Section 250(5) of the Local Government Act 1972.
 - The application is made by Mrs M. Kernagham ("the Applicant") for a full award of costs against the Council of the London Borough of Enfield ("the Council").
 - The appeal was against the refusal of a Certificate of Lawful Use and Development for the conversion of a single family dwelling-house into 1 x 2-bed & 1 x 3-bed self-contained units involving conversion of garage into a habitable room involving alterations to front elevation, single-storey side extension, extension to roof at side to form gable end with rear dormer and front rooflights.
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Decision

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

Reasons

2. The Planning Practice Guidance 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 has referred in general terms only to the National Planning Policy Framework.
4. An application for a Certificate of Lawful Use and Development in respect of the matters referred to in this appeal was made to the Council in January 2019 and refused in March 2019 ("the First Application").
5. In the Applicant's costs submission reference has been made to the Council's behaviour when dealing with the First Application. Whether the Council acted unreasonably at that time is not a matter that I can deal with. I have to decide as to whether the Council acted unreasonably in dealing with the appeal application.
6. The Applicant is concerned that the Council failed:
 - a) To engage with her agent during the determination of the First Application, and
 - b) To provide the Delegated Report ("the First Delegated Report") relating to the First Application.
7. The Applicant is of the view that had the First Delegated Report been provided this would have assisted her with the second application and thus may have

- avoided the second application being refused. It is not clear whether the Applicant ever received a copy of the First Delegated Report. I am aware that there are statutory requirements relating to decision making by Local Planning Authorities that would have allowed the Applicant to obtain the First Delegated Report although I accept that it should not be necessary for the Applicant to have to rely on such provisions – a simple request for the First Delegated Report should have sufficed.
8. I have not been provided with a copy of the First Delegated Report. Therefore, I am unable to come to any conclusion as to whether it would have assisted the Applicant when submitting the second application.
 9. The Applicant is also concerned that the Council failed to provide the Delegated Report in respect of the second application ("the Second Delegated Report"). However, the Council stated that the request for the Second Delegated Report was made on the date of the decision and that the Second Delegated Report should have been placed on their website within five working days of that formal decision. It is not clear whether the Second Delegated Report was available on the Council's website within the period specified.
 10. However, it appears from the documentation before me that the Applicant appealed the second refusal on the same date that it was refused, and the Applicant would not have had the benefit of the Second Delegated Report at the time of the appeal. It is not clear that the lack of the Second Delegated Report made any difference to the Applicant's decision to appeal the second refusal.
 11. The Second Delegated Report provides reasoning why the Council refused the second application. I note that the Applicant did not make a third application with the type of information that the Council had indicated that they required. Instead the Applicant chose to appeal the Council's decision and rely on the information that was already before the Council. I have concluded that the information supplied with the appeal was sufficient to grant the Certificate of Lawful Use and Development. The fact that the Council came to a different decision does not amount to unreasonable behaviour.
 12. There is no statutory requirement for the Council to inform any applicant for a Certificate of Lawful Use and Development what their determination will be in advance of their formal decision. In this case the onus was on the Applicant to provide sufficient evidence to support their application and to show that what they were seeking was lawful on the balance of probabilities.
 13. I therefore find, for the reasons explained above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Tim Belcher

Inspector