



Costs Decision

by **S Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 April 2020

Costs application in relation to Appeal Ref: APP/V4630/X/19/3231229 28 Park Road, Walsall, West Midlands WS5 3JU

- 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 Mrs K Johal for a full award of costs against Walsall Metropolitan Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for a 2 storey rear extension for domestic use.
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Decision

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

Reasons

2. Paragraph 028 of the Planning Practice Guidance (PPG) states the established premise that parties to an appeal normally meet their own costs. However, the PPG in paragraph 030 advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and thereby has directly caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal. The PPG makes it clear, at paragraph 049, that the Council is at risk of an award of costs if it prevents development, which, amongst other matters, should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.
4. The basis of the applicant's claim arises from the Council's re-assessment of the proposal at the appeal stage which subsequently led to the confirmation that the proposal benefits from permitted development under Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). In issuing the LDC refusal, the Council acted unreasonably in so far that it incorrectly applied the conditions of Class B of the GPDO.
5. The Council's appeal statement confirms the error and says that, in these circumstances, the decision was unreasonable. The Council accepts the appellant's claim for costs. The Council also confirms in its statement in response to the costs claim *"that there does not appear to be any mitigating factors against the arguments put forward"*. The LDC decision was determined on the basis of a loft conversion which was not referred to in the application or indicated on the drawing. It is clear that the Council erred on its judgement of the proposal.

6. The applicant considers that, based on several occasions of refusal by the Council and in view of the subsequent lengthy process, the Council has caused unnecessary and wasted expense. The applicant is seeking costs in relation to the professional fees for the preparation and submission of the appeal. It is noted that the applicant has a previous history of planning applications relating to proposals to extend the dwellinghouse. However, only the matter of this application for costs must be the subject of the associated LDC.
7. Accordingly, I do consider that the Council failed to properly evaluate the LDC with regard to the relevant parts of the GPDO. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that the costs application should succeed, and a full award of costs is justified.

Costs Order

8. 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 Walsall Metropolitan Borough Council shall pay to Mrs K Johal, the costs of the appeal proceedings, described in the heading of this decision.
9. The appellant is now invited to submit to the 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. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

S Hanson

INSPECTOR