



Costs Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 April 2020

**Costs application in relation to Appeal Ref: APP/W5780/X/19/3228970
41 Empress Avenue, Woodford Green, IG8 9DZ**

- 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 E Taylor for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for use of outbuilding for psychotherapy/counselling services.
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Decision

1. The application for costs is refused.

Procedural Matters

2. As the determination of the appeal to which the costs application relates turned on matters of law, it was not necessary for me to carry out a site inspection.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and where that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. In this case, the appellant submitted an LDC application to establish the use of an outbuilding to operate a counselling/psychotherapy practice receiving up to 20 clients a week was lawful by virtue of being ancillary to the use of the main dwellinghouse. It is clear that the Council misunderstood the nature of the application as they refused it on the grounds that the outbuilding had not been in use for a Class D1 purpose for a period of 10 or more years prior to the date of the application. I am satisfied from the evidence before me that the appellant never sought to make any case that the use had existed for 10 years or more.
5. Although the Council acknowledge the mistake, this fundamental lack of understanding of the case amounts to unreasonable behaviour on their part. Nevertheless, for a costs application to succeed, it needs to be shown that the unreasonable behaviour resulted in unnecessary or wasted expense through the appeal process.
6. The appellant's costs application statement says that the Council's refusal of planning permission was unfounded. However, an LDC application is not an application for planning permission. Its purpose is to ascertain whether

specified uses or operations would have been lawful on the date that application was made.

7. Despite the Council's misinterpretation of the LDC application, the question as to whether the appellant's practice within the outbuilding was ancillary, and thus not development requiring planning permission, still remained to be answered. Therefore the appeal was necessary, and so the expenses undertaken by the appellant were also necessary.

Conclusion

8. For the reasons above, I conclude that, although unreasonable behaviour on the part of the Council has been demonstrated, this has not resulted in unnecessary or wasted expense, as described in the PPG. Accordingly, an award of costs is not justified.

Elaine Gray

INSPECTOR