



Costs Decision

by Mr K L Williams, BA, MA, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 10 June 2020

**Costs application in relation to Appeal Ref: APP/G5180/X/19/3225438
Greenwood, Bickley Park Road, Bickley, Bromley, BR1 2AT**

- 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 D Hancock for a full award of costs against the London Borough of Bromley.
 - The appeal was against the refusal of an application for a certificate of lawful use or development (LDC) for proposed internal alterations to an existing outbuilding.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, costs may only 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. Planning Practice Guidance provides examples of behaviour which may give rise to an award against a Council. They are not exhaustive but include failure to produce evidence to substantiate a reason for refusal.
3. A full award of costs is sought on the basis that the Council behaved unreasonably in refusing to issue an LDC, resulting in wasted time for the appellant in preparing and lodging an appeal.
4. The appellant explains that he initially submitted a planning application but was advised to apply for an LDC because the proposed operations did not constitute development. It is argued that the Council's subsequent decision to refuse to issue an LDC contradicted that advice.
5. The appellant also says that he made the case that the proposed internal alterations did not constitute development. Nevertheless, the Council wrongly assessed the application on the basis of *Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)*. It is said that the Council made no objective analysis of whether internal alterations amount to development. It is also said that the Council's approach goes against established caselaw in *Emin v SSE & Mid Sussex DC [1989] JPL 909*.

6. The Council did draw the appellant's attention to the possibility of an LDC application in an email dated 12 November 2018. It was made clear in the email that this information was given without prejudice to any subsequent assessment or decision. There was not unreasonable behaviour in respect of that matter.
7. The Council refused the application because the proposal "*would not constitute permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as on the balance of probabilities, the proposed use of the existing building would not be reasonably required for purposes incidental to the enjoyment of the dwellinghouse.*"
8. The Council's case relied, in part, on Class E of the GPDO and on related considerations and caselaw. It also relied on section 55(2)(d) of the Act as amended. That section excludes from amounting to development the "*use of any building within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such*". The Council argued that the change of use in this case would not fall within the term "incidental".
9. Class E concerns, amongst other things, permitted development for the provision of a new building within the curtilage of a dwelling. There was nothing in the LDC application, or in a letter from the appellant's agent to the Council of 14 November 2018, to suggest that an LDC was sought for the erection of an outbuilding. It was not at issue in this appeal. The letter did refer to the installation of a shower room and bedroom in the outbuilding. Nevertheless, it was made clear that the appellant was not seeking to confirm the lawfulness of any proposed change of use of the building. That position had also been confirmed in the LDC application. It was clear that the appellant relied on the provision in section 55(2)(a)(i) of the Act as amended, that interior alterations, excepting certain mezzanine floors, would not amount to development. The basis of the appellant's case was further explained in his Grounds of Appeal Statement.
10. The Council's decision notice did refer to what was proposed as internal alterations to an existing building to provide a bedroom and shower room. However, it failed to assess the proposal on the basis of internal alterations. Instead it assessed the application as a proposed change of use. Nor did it provide substantive evidence to respond to the appellant's case that the proposed works would not amount to development and that no change of use was sought. This, together with the Council's reliance on Class E of the GPDO and related matters not pertinent to what was proposed, amounted to unreasonable behaviour by the Council. It did not substantiate its reason for refusing to issue an LDC.

Conclusion

11. Having regard to the above and to all other matters raised it is concluded that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 the London Borough of Bromley shall pay to Mr D Hancock, 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.
13. The applicant is now invited to submit to the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

K Williams

INSPECTOR