
Costs Decision

Site visit made on 11 February 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Costs application in relation to Appeal Ref: APP/L2820/W/19/3241209 Veritas, 13 Ironwood Avenue, Desborough, Northamptonshire, England NN14 2JJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Kettering Borough Council for a full award of costs against Mr & Mrs Paul & Fernanda Meurisse & Van Raepenbusch.
- The appeal was against the failure to give notice within the prescribed period of a decision on an application for planning permission (due to, as the appeal form states, a dispute over provision of local list documentation), for what is described as "This box 3 can obviously not contain a full description of our planning application. As such, our planning application in 12 parts has been further detailed in Chapter 1.A (pp 15-30/106) of our textual document. Overall, we apply for a two storey extension of our existing corner house with double garage, as complemented by a series of required related improvements as well as a series of safety and security upgrades, so that we can accommodate wheelchair access throughout, as well as a lift and a third bedroom (for nurse/carer). The extension, improvements and upgrades additionally aim to provide us with a more comfortable and more flexible as well as more healthy and secure living during retirement. We also aim to achieve a zero carbon emission property in two stages. The pitched roof will be replaced by a flat roof with glass barrier as well as lift and staircase access. A double garage will also be added to satisfy an apparently existing planning condition on the property. The property will for security and safety reasons be surrounded by a 2.3 m wall, which among others requires to increase any existing wall of 2 m to 2.3 m, additionally requires to replace any other border materials such as wooden fences by brick. The property will have at its rear, but fully within its private border, what can be called a canopy", dated 23 July 2019.

Decision

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

Procedural Matter

2. The application for costs is referred to in the Council's Statement of Case regarding the appeal. It is not specifically stated whether the application is for a full or partial award. However, I consider that it is evident from the information provided that the Council seeks a full award. I have made my decision on this basis.

Reasons

3. Irrespective of the outcome of an appeal, the National Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved

unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.¹

4. In summary, the applicant contends that the pursuit of the appeal by the appellants amounts to unreasonable behaviour and that an award of costs is justified for the following reasons:
 - despite advice given at pre application stage the appellants did not provide the correct and necessary information to make the application valid; nor did they seek the services of any professionals to ensure the plans/drawings and application details were acceptable;
 - the appellants ignored Council advice provided in letters from them regarding the application being invalid;
 - the Council considers the pursuit of the appeal by the appellants is unreasonable as the proposed development is so obviously unacceptable, contrary to the development plan and the National Planning Policy Framework;
 - due to the appeal being made, the Council were required to publish details about the application/appeal on its website and explain the appeals process to residents, despite the Council considering the application to be invalid, and
 - the appellants have wasted Council officer time and expense having to defend an appeal that is entirely without merit.
5. I note that the appellants have not commented on the Council's application for an award of costs.
6. I concluded in the appeal that the application was invalid. However, I must consider whether the appellants have behaved unreasonably, and that such unreasonable behaviour has directly caused the Council to incur unnecessary or wasted expense in the appeal process.
7. I note that the appellants consider they have not received what they understand to be pre application advice from the Council. However, I also note the Council's letter dated 2 July 2019 referred to as pre application advice, which includes recommending the appellants seek appropriate professional assistance.
8. Notwithstanding, having received an application, and following a series of communications between the parties, it is clear that the Council encouraged the appellants to go through the process of submitting a validation dispute notice, in accordance with s12 of The Town and Country Planning (Development Management Procedure) (England) Order 2015. The Council also made it clear in its communications regarding the validation dispute that going through such process would provide the appellants with a route to making an appeal against non-determination. With this in mind, it appears that the Council anticipated that an appeal would ultimately have taken place. I therefore find it difficult to understand why the Council now takes a different view in terms of the alleged unreasonable behaviour.

¹ Paragraph 030 Reference ID: 16-030-20140306, revision date 06 03 2014 – National Planning Practice Guidance.

9. Additionally, it will be noted from the appeal decision that I found the Council's latest suggested description of proposed development (letter dated 29 October 2019) was not adequate. As such, I have some sympathy with the appellants who did not agree to the suggested description of proposed development. I also observed that the appellant might not have been helped by the Council's reluctance to advise the appellant in terms of confirming the conditions attached to the decision granting planning permission for the appeal site.
10. Finally, irrespective of the Council's opinion of the merits of any proposal, appellants are entitled to utilise the appeals service. Inevitably, Councils will have to participate in such processes when applicants resort to the appeal process.
11. Bearing the above points in mind, I consider that unreasonable behaviour by the appellants, specifically resulting in unnecessary and wasted expense of Council officers in dealing with the appeal, as described in the PPG, has not been demonstrated and therefore an award of costs is not justified.

J Williamson
INSPECTOR