



Costs Decision

by **M L Milliken BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 July 2020

Costs application in relation to Appeal Ref: APP/G2435/D/20/3244784 The Cedar, 36 High Street, Castle Donington DE74 2PP

- 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 Mr Adams for a full award of costs against North West Leicestershire District Council.
 - The appeal was against the refusal of planning permission for the erection of a garden room/summerhouse.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process. This can include the failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
3. The applicant submits that the Council failed to reasonably substantiate the reason for refusal and that unreasonable behaviour has resulted in unnecessary and wasted costs in respect of the appeal, in circumstances where the application could have been determined quicker, positively and proactively by the Council at a local level.
4. I understand that an initial meeting was held on site to discuss the proposal, the details of which neither party has a formal record. I therefore have no firm basis to conclude that the informal advice given was so misleading as to amount to unreasonable behaviour on the part of the Council and, in any event, informal advice does not fetter statutory determination.
5. The applicant has expressed concerns regarding a lack of communication with the Council during the application process, and the extended length of time taken to make the decision. I have been provided with a detailed timeline of events. From the evidence before me it is clear that both parties actively communicated with each other during the determination process, including agreeing multiple extensions of time. It is also clear that the Council in this instance were amenable to issuing a decision within the statutory timescales, albeit with a recommendation for refusal. Moreover, the applicant had the right to appeal after 8 weeks and chose not to do so.

6. From the evidence before me it is apparent that the Council's case officer had been in discussion with the applicant's agent regarding the likely reason for refusal on more than one occasion prior to the Council's determination of the application and, for reasons set out in the applicant's statement, was not persuaded that alternative details were likely to come forward. Whilst a number of consultation responses were issued by the Council's conservation officer, these were internal LPA correspondence between officers prior to the formation of any formal recommendation and decision being taken. I do not believe the Council deliberately withheld information and, irrespective of the ongoing communications between the LPA and the applicant, I consider that it was sufficiently clear from the outset what the LPA's position was with regard to the proposed materials.
7. For reasons set out in the appeal decision I too have concerns regarding the inappropriate nature of the materials proposed and that planning conditions would not address these concerns. Whilst I appreciate that the outcome of the application will have been a disappointment to the applicant, the Council were not unreasonable in coming to that decision, and indeed following consideration of the details and merits of the scheme, I have concurred with the Council's assessment.
8. Whilst the decision notice is somewhat unclear in its wording, in particular with regard to the alleged harm to local character, it states the policy of the development plan with which the proposal would be in conflict, in addition to other considerations. Having regard to the case officer's report, I do not consider that the Council failed to properly evaluate the application or reasonably substantiate the reason for refusal. I have found that the Council had reasonable concerns about the effect of the proposed development, which were communicated early in the process and which ultimately justified its decision. I am satisfied that the applicant had an opportunity to address those concerns during the determination process.
9. I therefore find nothing to suggest that a decision was not reached on the basis of the merits of the proposal, as submitted by the applicant. I also find no substantive evidence of unreasonable delay or other inappropriate conduct, particularly given the multiple extensions of time that were agreed between both parties.
10. I therefore conclude that, for the reasons set out, neither procedural nor substantive unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

ML Milliken

INSPECTOR