
Costs Decision

Site visit made on 5 January 2021 by A J Sutton BA (Hons) DipTP MRTPI

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2021

**Costs application in relation to Appeal Ref: APP/P4605/W/20/3260390
Rear of 188 Walsall Road, Four Oaks, Sutton Coldfield, West Midlands
B74 4RH.**

- 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 Frank Howard for a full award of costs against Birmingham City Council.
 - The appeal was against the refusal of the Council to grant planning permission for conversion of existing garage and extension to create a dwelling.
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Decision

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

Reasons for Recommendation

2. The Planning Practice Guidance (PPG) sets out that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, in either a procedural or substantive way, which has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
4. The applicant states that the position of having to appeal was due to the Council's failure to accept comments set out in a previous appeal decision regarding a similar proposal on the appeal site¹. The Council has acted unreasonably by failing to properly consider the Inspector's comments. There has been no change in policy or material circumstances of the site that justifies the Council's approach to determining the planning application. The reasons for refusal deal with matters relating to the principle of developing the site when the Inspector's comments are quite clear that the site could be developed, subject to a suitable design of building, without harming the character or setting of the area. The Council confirmed the design had improved and the development was supported by the Council's City Design and Landscape officers.
5. The Council, in its rebuttal, state the Local Planning Authority's assessment of the application has been clearly articulated and substantiated, within the context of policy and guidance. In terms of the City Design and Landscape

¹ Ref APP/P4605/W/19/3239697 (the previous appeal decision)

officers, they perform an advisory role and their opinion is a material consideration in the planning judgement.

6. The Council acknowledge, with regards to the second reason for refusal cited on its decision notice, that this should not have been attached but emphasises that the primary reason for refusal is detailed in the first reason for refusal, which is the focus of the appeal.
7. Although it is unfortunate that a miscalculation occurred which resulted in an unnecessary reason for refusal, the Council acknowledged the error and chose not to defend the reason, and therefore acted reasonably in this respect.
8. Examples of behaviour which may give rise to substantive award of costs against councils include persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.² In this instance the previous appeal decision is a material consideration. However, the submitted case officer report demonstrates that the Council did consider the appeal decision in its assessment of the application.
9. While I have not agreed with the Council in this instance, the weight to be given to material considerations is for the decision maker and matters related to character and appearance are largely subjective. I am satisfied that the remaining reason for refusal was clearly substantiated with reference to relevant policies, guidance and the National Planning Policy Framework. As such, the Council did exercise its development management responsibilities in an appropriate manner and did not add to development costs through avoidable delay.
10. I therefore observe nothing which would suggest the Council has behaved unreasonably in either a procedural or substantive way which has resulted in wasted expense being incurred by the applicant during the appeal process. Therefore, for this reason I recommend that the application for an award of costs is not justified in this case.

Recommendation and Conclusion

11. For the reasons outlined above, and having regard to all other matters raised, I recommend that an award of costs is refused.

A J Sutton

APPEAL PLANNING OFFICER

Inspector's Decision

12. I have considered all submitted evidence and the Appeal Planning Officer's report and on that basis an award of costs is refused

Zoe Raygen

INSPECTOR

² PPG Paragraph 049 Reference ID: 16-049-20140306