The Planning Inspectorate

Costs Decision

Site visit made on 23 February 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021

Costs application in relation to Appeal Ref: APP/R5510/X/20/3258143
32 Start Road, Uxbridge UB10 0QH

- 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 Arek Marczewski for a full award of costs against the Council of the London Borough of Hillingdon.
- The appeal was against the refusal of a certificate of lawful use or development for: Demolition of the existing storage shed and summer house/art studio, erection of single storey detached outbuilding to serve as gym and art studio.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG)[1] advises that costs may 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.

3. The PPG lists examples of unreasonable behaviour. The lists are not exhaustive. They include a failure to produce evidence to substantiate each reason for refusal, inaccurate assertions about a proposal's impact, and not following, well-established case law[2].

4. The test of whether a proposed outbuilding is required for a purpose incidental to the enjoyment of a dwellinghouse as such, for the purposes of Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015, is a matter of judgement based on fact and degree.

5. As such, the Council was entitled to reach a different conclusion on the proposal to the appellant. However, the Council used a different description of development to that provided by the appellant and there is no evidence the Council had regard to the demolition proposed.

6. In its reason for refusal on its decision notice, the Council states that the above test is not met by the proposed development "in conjunction with the existing garage/outbuilding". So it is clear that the Council determined the application on the basis that one/part of one of the existing outbuildings was being retained.

[1] Appeals, Paragraph: 030 Reference ID: 16-030-20140306
[2] Appeals, Paragraph: 049 Reference ID: 16-049-20140306

7. The Council indicates this approach was based on what is shown on drawing A-HL-032B-PL-100, where the Council say no reference is made to the removal of the "existing garage/outbuilding". But this is not a credible explanation for the approach which was taken as it is clear from the application documents when read as a whole that the entire existing building in question is proposed for demolition. This is because it is not shown on any of the proposed drawings. So the assertion made about the proposal by the Council in its reason for refusal was inaccurate.

8. Had the Council had regard to all of the drawings, the outcome may well have been different and the appeal could have been avoided. It makes no difference that the Council did not visit the site as the development proposed in this case is clear from the drawings alone.

9. The Council did not submit an appeal statement and there is no requirement for it to have done so, providing it had already substantiated its reason for refusal, by way of, for example, an officer report. The officer's report in this case clearly states that it is based on the submitted plans but it contains no recognition of the demolition proposed. In this context, the Council's reason for refusal, and by extension the Council's case (as no appeal statement was provided) has not been substantiated.

10. The Council's assessment of whether the development is required for a purpose incidental to the enjoyment of a dwellinghouse as such, set out in its report, is entirely focussed on the footprint of the proposed building relative to the footprint of the main house. Whilst size may be an important consideration, it is not by itself conclusive. This has been established in case law relevant to outbuildings, referred to by the appellant[3].

11. The Council should be aware of this case law in the exercise of its development management responsibilities, particularly as it has been reminded of this specific case law in recent appeal decisions it has received[4]. As such, I conclude that the Council has not followed well-established case law in its decision making.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

13. 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 Council of the London Borough of Hillingdon shall pay to Mr Arek Marczewski, 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.

14. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

[3] *Emin v SSE & Mid Sussex DC* [1989] JPL 909

[4] Including APP/R5510/X/18/3213915 and APP/R5510/X/18/3214507 dated 26 June 2019 and APP/R5510/X/19/3228931 dated 13 January 2020