
Costs Decision

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2021

**Costs application in relation to Appeal Ref: APP/Q5300/X/20/3260997
61 Bramley Road, London N14 4HA**

- 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 T Jivajirahah for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was against the refusal of a certificate of lawful (LDC) use or development for the erection of 2 outbuildings.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The Applicant contends that the Council has behaved unreasonably by failing to determine the appeal in a consistent manner, having previously approved an LDC¹ for 2 outbuildings at the property that were separated from it by a 50mm gap. The Council has changed its mind and added its own interpretation of the GPDO² and caused the appellant the unnecessary cost of submitting an appeal.
4. Paragraph 048 of the PPG states that a Local Planning Authority (in this case the Council) is at risk of an award of costs if it has behaved unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing a planning application. It includes a number of examples of unreasonable behaviour, such as not determining similar cases in a consistent manner.
5. The Council argues that it produced well-reasoned, objective, specific and relevant evidence to substantiate its reason for refusing to grant the LDC. With regard to the previously approved LDC, the Council contends the buildings were significantly different in their size and relationship to the main dwelling than the appeal scheme, and the application was supported by more up-to-date appeal decisions which were highlighted in its officer report.
6. Both parties have presented appeal decisions to support their stance, all dated from between 2018-2020, and plans have been submitted for some of them.

¹ LPA ref: 18/01441/CEA

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

The appeal decisions against the Council show that it has been consistent in its approach.

7. What is apparent from the submitted appeal decisions is that other Councils have also held different views on Class E buildings. Furthermore, even if Inspectors found the buildings to fall within Class E, they found some would not be built for purposes 'incidental' to the dwellinghouse, depending on the configuration of the buildings in relation to the associated dwellings, and dismissed the appeals. The submission of the other appeal decisions illustrates the necessity to determine each appeal on its own merits, context and circumstances as not all scenarios are the same.
8. In its delegated report the Council explained its approach and also its concerns about whether the buildings would be built for incidental purposes, which is a necessary test when assessing the erection of Class E buildings. It is not unreasonable, in my view, that the Council would seek to interpret the GPDO as it did in the absence of minimum measurements and the oddity of having buildings only a few centimetres away from the dwelling. Indeed in some other classes or parts of the GPDO, where limitations are not expressed precisely, some degree of interpretation or the application of planning judgement is required. Even if the Council had found the buildings did fall under Class E, it was still entitled to question the 'incidental' purposes of the buildings, and this contributed to its decision to refuse the LDC.
9. Moreover, the previously approved LDC was significantly different to the appeal proposal. Whilst the outbuildings were still shown 50mm away from the rear of the dwelling, each of the proposed outbuildings was much smaller and both were for storage. But crucially, in my view, there was a far greater separation distance between the buildings in the previous LDC. Furthermore, even if the small gap between the buildings was the same, the Council had concerns about the 'incidental' use of the proposed buildings in the current LDC. These significant differences between the two proposals meant the Council felt able to approve the previous LDC but not the current one. The appellant's reference to a 2010 appeal, cited in the previous LDC delegated report, is not, in my view, evidence of an inconsistent approach.
10. I therefore find that, with such marked differences between the two LDC proposals, the Council was not inconsistent in its approach and it did not act unreasonably in drawing a different conclusion to the appeal proposal, even if there was still the same very small gap. The appeal could not have been avoided.
11. As I find that the Council has not acted unreasonably, I need not concern myself as to whether wasted expenditure has occurred, as both tests need to be satisfied before an award of costs can be made.

Conclusion

12. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG and alleged by the Applicant, has not been demonstrated. An award for costs is therefore not justified.

K Stephens
INSPECTOR