
Costs Decision

Site visit made on 31 March 2021

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2021

Costs application in relation to Appeal Ref: APP/L3245/W/20/3262685 Trefarclawdd Lodge, Coed-y-go, Oswestry, Shropshire SY10 9AT

- The application is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
 - The application is made by Mr Andy Middleton for a full award of costs against Shropshire Council.
 - The appeal was against the refusal of planning permission for the replacement of an existing double garage with first floor storage with a new family annexe on the same footprint.
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Decision

1. The application for an award of costs is refused

Reasons

2. The *Planning Practice Guidance* 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 applicant stated, firstly, that the Council had had sufficient information surrounding the demolition of the garage that previously occupied the site of the outbuilding subject of the appeal. However, it has not been made clear why that has an importance in considering this scheme, and that in itself was not part of the reasons for refusal. Moreover, if resolving that matter caused the applicant unacceptable delays then an appeal against non-determination could have been lodged. In such circumstances I have no basis to consider the Council would not have contested the appeal for similar reasons to those before me now and so in relation to that matter any delay has not caused additional expense in the appeal process.
4. It was said too that the Council had failed to take into account the financial hardship that a requirement to demolish the annexe would have caused the applicant. The weight to be attached to a material consideration is a matter of planning judgement. Having said that, I am unaware as to why the Council did not attribute weight to this as material consideration. However, demolition costs are invariably associated with retrospective planning applications. Therefore, whilst accepting the applicant's contention that the development had been undertaken in the mistaken belief that planning permission was not required, I see no grounds to afford those costs appreciable weight in the determination of the scheme. Consequently, given the strength of the Council's concerns, even if it had acted unreasonably in not attributing weight

to this as a material consideration, I am not satisfied it has resulted in unnecessary expense being incurred.

5. A further area of concern related to the ancillary nature of the use and the reasonableness of the Council in dismissing the planning application on the grounds that the development was tantamount to an independent dwelling. The planning application expressly sought permission for a family annexe, while the applicant made it clear from the outset that this was to be ancillary family accommodation, and a condition to this effect could have been imposed.
6. The Council's position in this regard appeared to relate primarily to the scale and level of accommodation, which is reflected in the amendments it suggested to achieve a positive outcome. I acknowledge that in seeking to restrict the use of the building one factor could well be whether it was of a reasonable size for the use in question, and that assessment would again involve an element of planning judgement. In my opinion, although I have come to a different view it was not unreasonable for the Council to find this outbuilding was too large to be an annexe and I consider it has substantiated its position adequately in its submissions. As such, it was not unreasonable to find the outbuilding's use could not be restricted to that of an annexe.
7. Finally, the advice the applicant had been given before commencing the works pre-dated the submission of the planning application and so did not, of itself, affect the appeal process. Indeed, Councils are not bound to follow the advice of professional officers if, as I have found in this case, a contrary decision can be reasonably justified. Therefore, while the applicant clearly considered the earliest advice he was given was inconsistent with the approach taken once the planning application had been submitted, that does not have a bearing on this application for costs.

Conclusions

8. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the *Planning Practice Guidance*, has not been demonstrated. As such, I conclude the application for an award is refused.

JP Sargent

INSPECTOR