



Costs Decision

Site visit made on 20 April 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2021

Costs application in relation to Appeal Ref: APP/L3815/X/20/3256176 Meadow Cottage, Hawksfold Lane East, Fernhurst GU27 3JW

- 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 Dan Atkins for a partial award of costs against Chichester District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a single storey rear extension.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably, causing another party to incur unnecessary or wasted expenditure in the appeal process- paragraphs 028 and 030. "Unreasonable" has its ordinary meaning, as established by the Courts¹. Paragraph 031 advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. The application for a partial award of costs was made in writing, in accordance with the advice in PPG paragraph 035. The award was sought on procedural grounds. In summary, the applicant stated that the Council had effectively introduced an extra reason for refusal in their appeal statement; the Council had not referred to a failure to meet the condition in paragraph A.3 (a) of Class A² at the application stage. The applicant was required to make further submissions in rebuttal of the Council's case, which would have been unnecessary had this matter been included in the reasons for refusal stated on the decision notice. The Council's actions had therefore led to the applicant incurring additional expense.
4. The PPG paragraph 047 advises that Councils should behave reasonably in relation to the procedural matters at appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which could result in an award of costs on procedural grounds include introducing fresh and substantial evidence at a late stage necessitating

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

² Of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Article 3, Schedule 2, Part 1.

- an adjournment or extra expense for preparatory work that would not otherwise have arisen, and; prolonging the proceedings by introducing a new reason for refusal.
5. The Council could not satisfactorily explain why a failure to meet the condition in question was not included on the decision notice as a reason for refusal. The external materials of the proposal were made clear on the plans submitted with the application. Based on the information before me, I am left with the impression that the matter was not fully assessed at the application stage and that the Council therefore belatedly sought to bolster its case at appeal. To my mind, by introducing this as a new matter at the appeal stage, the Council have plainly acted in a manner which is not dissimilar to the examples of unreasonable behaviour in relation to the procedures of the appeal in the PPG, referred to above.
 6. Nevertheless, the applicant's written submissions in respect of this new matter are relatively brief, being less than a page of text in a document of around 3½ pages in length submitted at the final comments stage. The amount of time involved in preparing the applicant's response in relation to the new matter has not been clearly set out but in my view, it is unlikely to have been great. Any extra expense incurred in preparing the applicant's response on this matter is therefore likely to have been limited. As they also sought to rebut other points raised in the Council's appeal statement, the applicant would still have submitted their final comments document in any event, albeit in a slightly shorter form. None of these factors suggest that the Council have introduced substantial additional evidence in relation to the appeal by raising the matter in question. Moreover, had the matter previously been raised by the Council at application stage, the applicant would still have been required to address it in relation to this appeal.
 7. For the above reasons, whilst the Council's actions in introducing what is in effect an additional reason for refusal at the appeal stage may be regarded as unreasonable behaviour, it has not been clearly shown that their actions resulted in the applicant incurring unnecessary or wasted expense. Accordingly, the conditions for an award of costs at PPG paragraph 030 have not been met.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR