



Costs Decisions

Site visit made on 9 June 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2021

Costs application 1 in relation to Appeal Ref: APP/J1915/C/20/3258919 Land at Molewood Hall, High Molewood, Hertford, Hertfordshire SG14 2PL

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by East Hertfordshire District Council for a full award of costs against Mr Michael Edwards.
 - The appeal was against an enforcement notice alleging the erection of an outbuilding.
-

Costs application 2 in relation to Appeal Ref: APP/J1915/C/20/3258919 Land at Molewood Hall, High Molewood, Hertford, Hertfordshire SG14 2PL

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Michael Edwards for a partial award of costs against East Hertfordshire District Council.
 - The appeal was against an enforcement notice alleging the erection of an outbuilding.
-

Costs Application 1

Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Council's case, having regard to guidance in the PPG, is that the appeal followed a previous unsuccessful appeal for the same or similar development, in relation to which the circumstances of the case have not materially changed in the intervening period. It is therefore argued that this appeal had no real prospect of succeeding.
4. However as set out in my main decision, a key distinction between this appeal and the one that was heard previously was the appellant's submission of a Unilateral Undertaking (UU). The effect of this UU would be to revoke planning permission for a previously approved building along with permitted development rights for the erection of future buildings on the same land, in the event of the appeal being allowed. A further distinction was the submission of

¹ Reference ID: 16-030-20140306

an alternative design of building for consideration, in the event of the existing development being unacceptable.

5. There can be no doubt that these matters were key material considerations which needed to be factored into the overall planning balance and which to my mind would amount to a material change in circumstances when compared with the previous appeal. Accordingly, I disagree that this appeal had no reasonable prospect of succeeding based on the outcome of the previous appeal.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Costs Application 2

Decision

7. The application for a partial award of costs is refused.

Reasons

8. The appellant's case is that the Council's application for an award of costs was itself unreasonable, with costs having been incurred in order to defend that application.
9. The Council set out in its statement that it did not consider the UU met the key tests of being necessary to make the development acceptable in planning terms or relevant to the development in question. It referred to the separation distance between the two sites. The Council also implied that the development would not be able to proceed because of the apparent failure to discharge a pre-commencement condition. Whilst I did not agree with this assessment, the residual position would have left the Council with insufficient reasons to counterbalance the factors weighing against the development, either as constructed or as presented in the alternative, so as to produce a different outcome to the previous appeal.
10. Although it was incorrect to say that there had not been a material change in circumstances relating to the current appeal, given the above context I am not persuaded that the Council was acting unreasonably or in 'bad faith'.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR