



Costs Decision

Site visit made on 30 June 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26th July 2021

Costs application in relation to Appeal Ref: APP/E0345/X/20/3262741 1 & 2 New Century Place, East Street, READING, RG1 4ET

- 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 Studios reading Ltd for a full award of costs against Reading Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for 135 self-contained studio apartments in Class C3 dwellinghouse use.
-

Decision

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

Reasons

2. The appellant seeks a full award of costs for various reasons. Firstly, they argue the validation of the application was unreasonably delayed. Secondly, the Council delayed reaching a decision and thirdly the Council unreasonably resisted the appeal.
3. The third claim is the main issue here. The validation delays concerned the Council's view that important evidence had not been provided and so the application was incomplete. After it became clear this evidence was not to be forthcoming the application was validated on the date it was originally sent in, so it is difficult to see how this was unreasonable.
4. The appellant argues they did provide some of the information but not all. There was an issue around the confidentiality of the ASTs the Council wanted, although this seems to me not to have been unresolvable. Nevertheless, no explanation as to how the appellant has been prejudiced by this has been provided and I can't see how it is relevant to the outcome of the appeal or to the appellant incurring any wasted expense?
5. The decision delay was down to the short time left from the delayed validation. The Council informed the appellant on the final day for determination that it required another 2 weeks. The agent telephoned to say that he would seek his client's views, then later that day confirmed they would be making a non-determination appeal. Again it is difficult to see what the unreasonable actions were. The Council seemed to be moving towards a view the application would be refused but were not there yet. In fact they told the agent they had decided to refuse the application but that was the next day after the appeal had been lodged, so either way the appellant would have had to make an appeal.

6. Whether the Council's continued defence of the appeal was unreasonable in the light of clear evidence to the contrary is the key issue. The appellant says the Council's argument was simply conjecture. There were no facts or evidence to support their view against the overwhelming strength of the appellant's case.
7. In an LDC application or appeal it is up to the applicant to demonstrate their case. This usually involves them providing the evidence to do that. It is up to the Council to analyse that evidence to see whether it does actually demonstrate the case the applicant is making out. Counter evidence is useful but often not available as the Council are often not in a position to provide alternative facts of their own, they can only go on what the applicant has provided.
8. In this case, the Council did not consider the case for a C3 use had been made out. They thought the appellant's evidence actually showed a sui generis student hall of residence had been created. They can only be criticised for this if such an inference was unreasonable. I did not agree with them, but I can see why they thought as they did. I may not have agreed with the Council as to where a line between a student hall of residence and C3 flats should be drawn, but it has to be drawn somewhere, and it was not immediately obvious the appeal buildings were just C3 flats.
9. In my view the Council did not act unreasonably in defending the appeal and the appellant was not put to wasted or unnecessary costs as a result.

Simon Hand

Inspector