Costs Decisions

Site visit made on 25 June 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2021

Costs application in relation to Appeal Ref: APP/X1545/X/20/3263452
30 Walden House Road, Great Totham, Essex CM9 8PN

- 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 & Mrs G Shaw for a full award of costs against Maldon District Council and by the aforementioned Council for a full award of costs against Mr & Mrs G Shaw.
- The appeal was against the refusal of a certificate of lawful use or development for a garage conversion to a residential annexe.

Decisions

1. The applications are refused.

<u>Costs application: Mr & Mrs G Shaw</u>

Reasons

2. The Planning Practice Guidance (PPG) 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. Awards against a party may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.

3. The appellants advise that the claim against the Council is made on both substantive and procedural grounds. However, the matters raised by the appellants appear to relate to the substance of the matter under appeal. The appellants have provided me with a number of appeal decisions which, it is asserted the Council's decision is inconsistent with, as well as the judgement in *Uttlesford DC v SSE & RJ White* [1991].

4. The Council set out clearly within its delegated report that the proposed works, the infilling of the garage doors with recessed brickwork and windows, amounts to development. It then goes on to determine whether the building accords with the conditions set out in Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO)(as amended). This, in my view, is the correct approach.

5. Whilst it would have been helpful for the Council to explain out how it reached its conclusion that the proposed works would constitute development, having regard to the provisions of the Act, as set out in my decision, I have agreed with its conclusion in this regard.

6. I have also agreed with the Council's conclusion that the proposal would not be development which is permitted under Class E, Part 1 of Schedule 2 of the GPDO. It follows that the Council was not unreasonable in reaching the conclusion that it did.

7. As set out in my decision, while the Uttlesford case concerned a building which had been increased in height, this was not a matter the Court had to decide upon. The main issue in contention in that case was whether a material change of use had occurred. However, in the appeal before me, even if I had found there would be no material change of use, the proposal would not have been lawful because the proposal included operational development for which planning permission was required. I do not, therefore, believe that the Council has acted contrary to established case law.

8. The Technical Guidance for Householders, although only guidance, gives an explanation of the rules on permitted development for householders. The Council's reference to and consideration of the advice contained within the document was therefore not unreasonable, nor did it purport to provide a definitive legal decision.

9. The Council's decision is not flawed simply because it referenced less appeal cases than the appellants. The appeal decisions cited by the appellants were either not directly comparable to the appeal scheme or did not include sufficient detail for me to assess whether they were comparable. I have seen nothing in the decisions cited which would lead me to a different conclusion on the facts of the case.

Conclusion

10. I therefore conclude that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Costs application: Maldon District Council

Reasons

11. The PPG sets out that an appellant is at risk of an award of costs being made against them if the appeal… had no reasonable prospect of succeeding. The Council assert that the appellants have acted unreasonably by lodging the appeal as it had no reasonable prospect of success.

12. The appellants' case appears to misinterpret the Council's reason for refusal, focusing on whether the outbuilding would remain ancillary and incidental to the use of the main dwelling, rather than the fact that the Council has concluded the proposed works would constitute development. This is perhaps, in part, due to the wording of the refusal within the Council's decision, which is that '…it is not considered that the granny annexe would be required for purposes incidental to the enjoyment of the dwellinghouse.'

13. As set out in my decision, the first point of consideration is whether the proposed works would be development for the purposes of the Act. The Council has assumed that they are, and the appellants have assumed that they are not.

14. Although I have agreed with the Council in this instance, just because there would be external works does not automatically mean that it would be development for the purposes of the Act. While I was not persuaded that the proposed works would not constitute development, it is a matter of planning judgement whether, as a matter of fact and degree, the works considered in this appeal would constitute development under the provisions of the Act. I do

not believe the appellants acted unreasonably by lodging the appeal, given their stance that the operational development would not materially affect the appearance of the building.

15. Whilst the appeal did not succeed, the appellants exercised their right of appeal and were not unreasonable in doing so. Thus, the Council was not put to unnecessary or wasted expense.

Conclusion

16. I therefore conclude that unreasonable behaviour by Mr & Mrs G Shaw, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M Savage

INSPECTOR