



Costs Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2021

Costs application in relation to Appeal Ref: APP/E5330/X/21/3269071 9 Kinlet Road, Plumstead, London SE18 3BZ

- 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 and Mrs J Monteiro for a full award of costs against Royal Borough of Greenwich Council.
 - The appeal was against the refusal of a certificate of lawful use or development for erection of a single-storey, flat roofed timber-clad outbuilding (6.8x5.1x2.5metres) within the curtilage of a dwellinghouse, for uses incidental to the enjoyment of the dwellinghouse.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the Guidance) 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 applicants state that the Council did not advise whether or not planning permission was required for the proposed building during pre-application discussions. It is also said that the Council failed to negotiate on revisions to a proposal during a planning application for the building which was refused. Post application discussions between the applicants and the Council also indicated a potential for the building to be permitted development but the Council expressed concerns that it would not be for reasons which differ from those on which the LDC application was refused.
4. Ultimately, however, any views expressed by the Council during pre or post application discussions are without prejudice to any decision made and Councils are not bound by the informal advice they give. Likewise, whilst often good practice, there is no legislative requirement for a Council to negotiate on amendments to schemes whilst considering an application.
5. Nonetheless, the applicants also claim that the Council made no attempt to refute their case that the proposed building was permitted development. The Guidance gives examples of behaviour by Councils which make give rise to a substantive award of costs. Such examples include failure to produce evidence to substantiate each reason for refusal on appeal.

6. In this case, the Council has not submitted an appeal statement, relying solely on its officer report which supported its decision to refuse the LDC application. Within that report, in assessing the relevant criteria of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), the Council simply state that the outbuilding would be situated on land between the side elevation of the dwelling and the boundary of the dwellinghouse. It does not say why it believes that to be the case. The only assessment beyond that is a small plan which shows the proposed building and a blue line drawn from the side elevation of the house. There is no annotation to the plan nor is there any explanation as to how or why the Council consider the plan represents a sufficient interpretation of the limitation set out under E.3 of the Class E of Part 1 of the GPDO. Indeed, the report does not consider at all the question of whether the GPDO defines the word 'between' and whether that would be apply in the case here.
7. Moreover, the Council has had no regard to the Permitted Development Rights of Householders Technical Guidance published by MHCLG¹ in September 2019. In coming to a logical and reasoned assessment of whether the development would fall within the parameters of the limitation under E.3, it should have had regard to relevant Government guidance which is clearly designed to assist with interpretation of the GPDO. There is no evidence that it did so. Indeed, the applicants brought the guidance to the Council's attention.
8. Ultimately, the Council was entitled to come to the view that it did, however, it should be evident that such conclusions have had regard to relevant legislative provisions, guidance and are substantiated accordingly. In this instance, I am not satisfied that is the case. I find the Council's failure to do so amounts to unreasonable behaviour as a result of which expense has been wasted because the appeal could have been avoided.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Royal Borough of Greenwich Council shall pay to Mr and Mrs J Monteiro, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Royal Borough of Greenwich Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Whitfield

INSPECTOR

¹ The then Ministry for Housing, Communities and Local Government