



Costs Decision

Site visit made on 7 December 2021 by B Phillips BSc MSc MRTPI

Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2022

Costs application in relation to Appeal Ref: APP/Z0116/D/21/3286721 11 Jacobs Wells Road, Bristol BS8 1DX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Hugh Leaman for a full award of costs against Bristol City Council.
 - The appeal was against the refusal of planning permission for replacement windows and doors from timber to uPVC.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) makes it clear that parties in planning appeals normally meet their own expenses. It also sets out that costs may only 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. It states that unreasonable behaviour may include preventing or delaying development which should clearly be permitted.
3. The applicant originally submitted an application to the Council for a Certificate of Lawfulness for replacement windows and doors. The Council advised in a letter dated 3 June 2021 that further information was required, however the letter does not state what was required, rather it invites a telephone conversation to bring matters to the applicant's attention. A subsequent letter dated 22 June 2021, after that telephone conversation, advises that planning consent will be required for the alterations based on the details supplied. Little detail is given in the letter or subsequent submissions to clarify why the Council considered the replacement windows and doors required planning permission.
4. Following discussion with the Council, the applicant did not continue with the Certificate application and transferred the fee to a new planning application for the replacement windows and doors. I appreciate that the applicant did not have the benefit of professional advice at that time and that the Council was seeking to be helpful in recommending a planning application be made. Nevertheless, there is nothing in the correspondence provided which prevented the applicant from pursuing a Certificate or that specifically stated that the original application could not be registered, as it only states that a planning application should be submitted. Therefore, while the applicant had the impression that their original application could not be continued with, this is not borne out by the formal correspondence.

5. Even if the Council had refused to validate the Certificate application, the applicant would still have had the right to appeal against the failure to make a decision. Consequently, I find that while the Council could have been clearer in explaining the situation in writing, it did not prevent the applicant from pursuing a Certificate. Therefore, its behaviour on this procedural matter was not demonstrably unreasonable.
6. The Council clearly communicated with the applicant during the planning application, although updates on progress and the decision were delayed due to the need to carry out statutory publicity and to obtain comments from the Conservation Team. While there is no explanation given for why these processes were delayed, they were communicated to the applicant, albeit late on, and further submissions were subsequently accepted by the Council and an extension of time sought before a decision was issued.
7. I understand that only verbal comments on the application were made by the Council's Conservation Team. Whilst notes or a summary of the discussion could have been made, the Council advises that the comments were incorporated into the officer report as part of the assessment of the scheme and I have no reason to believe otherwise. Furthermore, the submitted correspondence shows that the objection of the Conservation Team was communicated to the applicant via email before a decision was made, who was then able to put forward further information during the application process in response.
8. Consequently, it has not been demonstrated that the delays in the application process or absence of detailed written comments from the Conservation Team were unreasonable behaviour by the Council or that they led to unnecessary or wasted expense in the appeal process for the applicant.
9. The applicant suggests that the replacement windows and doors are either not development or, if they are development, they are permitted under Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). They cite this as a fallback position available to them, and as such, it was potentially a material consideration to be taken into account during the planning application. This information was before the Council during its consideration of the application but was not considered in its Delegated Report. The failure to consider a potential material consideration was unreasonable behaviour by the Council.
10. Notwithstanding this, the Council's consistently stated position is that the replacement windows and doors would not be permitted development. Moreover, the weight to be given to any material consideration is a matter for the decision maker. Therefore, from the evidence before me I consider it unlikely that the Council would have reached a different decision even if it had discussed this matter in the Delegated Report and considered it as part of the planning balance. Consequently, I do not consider it likely that the outcome of the application would have been different, or that an appeal would not have been necessary, had this matter been taken into account. It has not therefore been demonstrated that this unreasonable behaviour resulted in unnecessary or wasted expense during the appeal process.
11. In determining the appeal, I have reached a different conclusion to the Council having had regard to all of the information before me, including my observations of the site and the Conservation Area. However, the case put

forward by the Council was clearly set out with reference to local conditions and its reason for refusal was robustly evidenced and based on relevant local and national planning policies. It has not therefore been demonstrated that the appeal scheme was development which should clearly have been permitted.

Conclusion

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. I recommend that an award of costs is not justified in this case.

B Phillips

APPEALS PLANNING OFFICER

Inspector's Decision

8. I have considered all the submitted evidence and the Appeal Planning Officer's report and concur that an award of costs is not justified in this case.

L McKay

INSPECTOR