
Costs Decisions

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2021

Costs application A in relation to Appeal Ref: APP/W5780/W/19/3228281 223 Dawlish Drive, IG3 9EH

- 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 Misbah Uddin for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for approval required under Schedule 2, Part 1, Class A, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a single storey rear extension.
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Costs application B in relation to Appeal Ref: APP/W5780/X/20/3256843 223 Dawlish Drive, Seven Kings, Ilford IG3 9EH

- The application is made under the Town and Country Planning Act 1990, sections 195, 196(8) and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Misbah Uddin for a full award of costs against the Council of the London Borough of Redbridge.
 - The appeal was against the refusal of a certificate of lawful use or development for the construction of a single storey rear extension.
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Decisions

1. Application A: The application for an award of costs is allowed in the terms set out below.
2. Application B: The application for an award of costs is allowed in the terms set out below.

Reasons

3. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The applications are made on the basis that the Council's decision to seek to decline to determine the application for prior approval was not lawful. And, that had the Council acknowledged that their failure to determine the application meant that prior approval was deemed to be granted for the proposed extension, there would have been no need for the applicant to submit the application for a lawful development certificate (LDC).
5. The Council is of the view that it acted in good faith in declining to determine the application for prior approval and that had the application been validated it is likely to have been refused. Additionally, the applicant could have sought

- pre-application advice and the applicant has sought to confuse the neighbour by submitting multiple applications for prior approval which is not reasonable.
6. As I have set out in the appeal decision in respect of the application for prior approval, the Council's purported decision to decline to determine the application, exercising their powers under section 70B or s.70A of the Act, was not lawful. Consequently, it was unreasonable for the Council to seek to make a decision that it had no lawful basis on which to do so and, to not inform the applicant of their decision, as the PPG advises.
 7. Following the applicant's email to the Council on 7 May 2019, the Council should have acknowledged that they did not make a lawful determination of the prior approval application within the relevant period. The applicant should have been informed that this would leave him free to implement the development provided it complied with the submitted details and met with all the relevant requirements and limitations in the GPDO. Had this happened it is likely that the appeals would have been avoided.
 8. Whilst the Council argue that had they validated the application it is likely it would have been refused; I cannot be certain of this. The fact is that they should have validated the application and they didn't which led to the appeal being lodged.
 9. After the first appeal was made, the applicant continued to correspond with the Council regarding their interpretation of s.70A & B. Therefore, the Council had the opportunity to review their case and to have rectified its inappropriate decision making, in which case the applicant would have had no need to submit the application for a LDC.
 10. Although the Council argues that the applicant was not required to submit an application for a LDC, they did state in an email to the applicant, dated 7 January 2020, that if the applicant were to pursue the development on site they would be liable to enforcement action.
 11. In my view the Council's actions were such that the applicant had little recourse to try to have clarity on the position other than to submit the application for a LDC, in order to seek to demonstrate that the extension, subject of the application for prior approval, could be lawfully implemented.
 12. Notwithstanding that I have refused to grant a LDC, it seems probable that the application and subsequent appeal would not have been submitted, had the Council conceded that their failure to determine the application for prior approval meant that prior approval is deemed to be granted.
 13. There is no requirement for an applicant to seek pre-application advice and whilst I acknowledge the number of applications the applicant has submitted; it appears that there had only been one prior to the application subject of Appeal A. Consequently, these are matters of little weight.
 14. Taking all these matters together I find that the Council has acted unreasonably. The Council failed to deal properly with the first application in accordance with legislation and established caselaw. Had it done so it is likely that both appeals could have been avoided, thus the behaviour has led to unnecessary and wasted expense in the appeal process. A full award of costs is justified for both applications.

Costs Order - Application A

15. 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 the Council of the London Borough of Redbridge shall pay to Mr Misbah Uddin, 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.
16. The applicant is now invited to submit to the Council of the London Borough of Redbridge, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Costs Order - Application B

17. 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 the Council of the London Borough of Redbridge shall pay to Mr Misbah Uddin, 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.
18. The applicant is now invited to submit to the Council of the London Borough of Redbridge to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Felicity Thompson

INSPECTOR