

Costs Decision

Site visit made on 25 January 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Costs application in relation to Appeal Ref: APP/B0230/X/21/3278349 35 Wetherne Link, Luton LU4 9PE

- 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 Mrs Silvija Lenortavice for a full award of costs against Luton Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a proposed rear detached outbuilding for ancillary use to family dwellinghouse.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party which has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant is seeking a full award of costs on the basis that the respondent failed to engage proactively after receiving an appeal decision for a similar development. Had the respondent engaged, the applicant claims the refusal and need for the appeal could have been avoided. This is a procedural claim.
4. In an LDC case, the onus of proof is squarely on the applicant. Class E of the GPDO¹ confirms that outbuildings required for purposes incidental to the enjoyment of the dwellinghouse as such, are permitted development, subject to various conditions and limitation. The applicant should show, on the balance of probability, that the outbuilding proposed is required for the incidental purposes stated and that it meets the relevant conditions and limitations.
5. There is no dispute that the proposed outbuilding meets the conditions and limitations. However, evidence provided with the LDC application, upon which the respondent's refusal is based, failed to provide details of why a building of the size and design proposed was required for the purposes stated. In the absence of such details, at the application stage, the respondent could not have found that the proposed outbuilding was permitted development.
6. The appeal decision identified by the applicant relates to an application under s78 of the TCPA 1990 for operational development. The considerations in determining such applications are significantly different to the matters of fact to be considered in an application under s192(b) for a lawful development certificate. Having regard to the appeal decision identified would not therefore

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

have changed the respondent's decision to refuse to issue a lawful development certificate.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Madge

INSPECTOR