
Costs Decision

Site visit made on 15 March 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 25th March 2022

Costs application in relation to Appeal Ref: APP/K0235/X/21/3275579 7 Crofton Close, Bedford MK41 8AJ

- 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 Dr Han for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the installation of two air conditioning units.
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Decision

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

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.
3. The applicant considers that the Council has behaved unreasonably in respect of procedural and substantive matters. In terms of process the applicant says that the Council's withdrawal of its decision to issue an LDC was irrational and had it not done so the appeal could have been avoided.
4. The Council sent an email dated 25 January 2021 to the applicant advising him that a decision had been made to grant an LDC and that this was waiting for signature from a senior officer. The applicant has taken this communication as amounting to the grant of an LDC.
5. In relation to an LDC for operational development, section 191(5) of the Act requires that the LDC specify the land to which the LDC relates, the operations in question, the reasons for finding the operations to be lawful and the date of the application for the certificate. The email from the Council does not contain this information. Notwithstanding that the email makes it clear that further processing was to be undertaken, it does not constitute an LDC for the purposes of the Act. The Act does not specify the contents of any decision to refuse the application for an LDC.
6. The Council has not issued an LDC and subsequently sought to revoke it and it has not made the procedural error which is suggested by the applicant. For these reasons the Council has not acted unreasonably.

7. The Gluck judgement¹, which relates to email as a satisfactory form of correspondence, could only be relevant if a certificate had been issued which is not the case.
8. In substantive terms the applicant considers that the Council reached the wrong decision in terms of the visibility of the air conditioning units (AC units) and whether they were permitted development and gave disproportionate weight to a neighbour's objections.
9. The PPG states that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly be permitted. It will be seen from my decision on the appeal that I consider that the Council had grounds to refuse the LDC on the basis that the AC units have a material impact on the appearance of the building, and they do not constitute permitted development. In this respect the Council has not acted unreasonably in terms of establishing that the installation of the AC units was lawful because there are grounds to demonstrate that it was not.
10. The Council's report refers to two of the applicant's neighbours having objected to his application for the LDC. However, it is noted that the comments which were made about the merits of the AC units were not relevant.
11. The applicant refers to an email sent to him in May 2021 in which the Council urged him to submit an appeal promptly. The Council also queried the timescale which the applicant considered was necessary for an appeal to be made. The reason given by the Council for making these comments was because it was under pressure to take formal action in the case. The applicant suggests that this pressure was exerted as a consequence of one of his neighbour's representations.
12. There is no substantive evidence before me to show that the Council were unduly influenced by the neighbours to either refuse the LDC or to advise the applicant to submit his appeal more quickly. It will be seen from my appeal decision that I have found that the Council had grounds for refusing to issue the LDC notwithstanding any representations made by the neighbours.
13. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Sarah Dyer

Inspector

¹ Gluck v SSHCLG & Crawley BC [2020] EWHC Civ 1756