



Costs Decision

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 July 2022

Costs application in relation to Appeal Ref: APP/X0360/X/21/3285604 Land at 1 Hill House Cottages, Milley Lane, Hare Hatch RG10 9TH

- 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 Daniel Nash for a full award of costs against Wokingham Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the erection of an incidental residential outbuilding.
-

Decision

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

The submissions

2. The reasons given for the costs application are summarised as follows:
 - The Council's conduct on the LDC application that preceded the LDC application subject of the appeal;
 - The Council failed to discuss the LDC application subject of the appeal prior to its determination;
 - The Council failed to substantiate their refusal of the LDC application;
 - The Council failed to correctly apply the relevant caselaw; and
 - The Council failed to provide evidence on which it relied in determining the LDC application.
3. I have had regard to the Council's response to the costs application in reaching my decision.

Reasons

4. Paragraph 030 of the Planning Practice Guidance on Appeals (the Appeals PPG) 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.
5. Paragraphs 047 and 049 of the Appeals PPG provides examples of unreasonable behaviour on the part of the local planning authority. These include:
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;

- failure to produce evidence to substantiate each reason for refusal on appeal;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - lack of co-operation with the other party or parties; and
 - delay in providing information or other failure to adhere to deadlines.
6. Although some of the above examples clearly relate to the determination of planning applications, the principles of these can be applied to this case and circumstances where development is clearly lawful but an application for a LDC is refused.
 7. I note the applicant's criticism of the Council in its dealing with the previous LDC application, including the suggested lack of agreement from the Council with regard to any possible costs applications, had the applicant made an appeal against the refusal of that LDC application. It is suggested that this resulted in the need to submit the application subject of the appeal before me.
 8. Had an appeal been made against the Council's refusal of the previous LDC application, I acknowledge that the decision maker may well have dealt with matters similar to those considered by me, including whether or not the purpose of the development would have been incidental to the enjoyment of the dwellinghouse. However, their determination would not have been made in general terms as suggested by the applicant. It would have been made in respect of the building proposed in that case. Whilst a previous appeal decision in these circumstances may have been material to the determination of any subsequent LDC application, it would not be definitive on the matter of the purpose of **any** subsequently proposed building on the site.
 9. For the above reasons, I cannot find that the Council's conduct on a previous LDC application demonstrates unreasonable behaviour in the circumstances of the appeal before me. Even if it had behaved differently in that case, I cannot conclude that the appeal before me is likely to have been avoided.
 10. The purpose of an LDC application is not for the Council to advise of what activities in a proposed building might make its purpose incidental to the enjoyment of a dwellinghouse. As noted in my appeal decision, the burden of proof is on the applicant to show that, on the balance of probability, the development referred to in the application would be lawful if begun on the date the application was made. The Council were not, therefore, unreasonable in failing to give the advice requested.
 11. That the Council did not engage with the applicant before making its decision on the LDC application does not demonstrate unreasonable behaviour in this case. The evidence submitted with the application is thorough, such that there would have been little need to discuss the submission with the applicant. I am also satisfied that the Council has considered the submitted evidence in full in the delegated report. I am not persuaded that any discussions with the applicant during the determination of the LDC application would have resulted in a different outcome.
 12. Neither am I persuaded that the Council has failed to substantiate its refusal of the application. The delegated report provides a reasoned justification for the

Council's decision and adequately deals with the salient issues in this case. Whilst I have not agreed with the Council's conclusions, the Council's case is sufficient for me to conclude that, on balance, evidence has been produced to substantiate the reasons for the refusal of the LDC application.

13. In dealing with the relevant case law the Council acknowledges that the size of the building is not a determinative matter, and have considered the scale of the applicant's use of the building for his hobby, as well as the overall size of the building to support its refusal of the LDC application. This is an approach that is supported by *Emin v SSE & Mid Sussex DC* [1989] JPL 909.
14. With regard to the appeal referred to by the Council, I can see that it has only relied on an extract of the appeal decision, rather than providing the whole document or any other details of that case. For this reason I have given this evidence very little weight in my decision, particularly as I am unable to make any informed comparison between the development in that case and that subject of this appeal. In view of this, whilst I acknowledge that only limited details of that case have been provided by the Council, this is not sufficient for me to conclude that it has behaved unreasonably.
15. For the reasons given above, I do not find that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR