



Costs Decisions

Site visit made on 7 July 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2022

Costs application in relation to Appeal Ref: APP/V4630/X/21/3284276 59 Sneyd Lane, Essington WV11 2DU

- 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 Sarah Noad for a full award of costs against Walsall Metropolitan Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a hairdressing micro business.
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Costs application in relation to Appeal Ref: APP/V4630/W/21/3284261 59 Sneyd Lane, Essington, Wolverhampton WV11 2DU

- 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 Mrs S. Noad for a full award of costs against Walsall Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for front bay window and change of use of garage to working salon.
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Decisions

1. The applications for an award of costs are 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. "Unreasonable" is used in its ordinary meaning as established by the Courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774, and not in the stricter public law definition of unreasonable. Awards against a party may be either procedural or substantive.
3. The applicant asserts that the Council has failed to justify its reasons for refusal of both applications and has sought to rely on vague, generalised and inaccurate assertions which are not material planning considerations or which are capable of being addressed through the imposition of conditions in refusing to grant planning permission for the Application and has thus prevented or delayed development which should clearly be permitted having regard to the development plan, national policy and other material considerations. The applications for costs relate to the merits of the appeals and are therefore substantive.

Lawful Development Certificate (LDC)

4. The Council set out its reasons for refusing the LDC application a letter dated 13 September 2021. The reasons given are two-fold, firstly, that there is

insufficient information provided to determine that the proposal constitutes an ancillary use and secondly, that the proposed extension would not be permitted development.

5. The applicant raises concern that they have been misadvised and that they received 'supportive tone' when submitting the LDC application. It is not possible for the applicant to seek some informal determination of whether planning permission is required and the Council. Even if the applicant received advice from the Council that an LDC may be an appropriate way forward, the burden of proof in such an application is firmly on the appellant, on the balance of probabilities.
6. The appellant advises the extension did not form part of the LDC application. There is no power for the local planning authority to modify the terms of an LDC application. It is for the appellant to propose the use or operations that they wish to ascertain the lawfulness. Although the appellant did not request a determination on the front extension, the appellant has chosen not to comment on this through the appeal as it was not included in the application. The appellant has therefore not incurred wasted expense in dealing with this reason for refusal.
7. Section 192(2) of the Act states 'if...the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application'. While the Council considered the planning effects of the proposal, the planning consequences of the change may be relevant in determining whether a material change of use would be likely to occur.
8. With respect to the use, whilst I have used the term incidental in the appeal decision, which is the terminology used in section 55 of the Act, I have also found that the evidence does not show, on the balance of probability, that the use would be incidental to the enjoyment of the dwellinghouse. I cannot therefore agree that the Council was unreasonable in refusing to issue a LDC in this instance.

Planning application

9. The Council set out its reasons for refusal in a decision dated 13 September 2021. The reasons given are clearly stated and make reference to relevant local development plan policies, as well as the National Planning Framework (the Framework)(2021). The Council's appeal statement largely repeats the assessment and reaffirms its reasons for refusing the planning application.
10. As can be seen from my decision, I have agreed with the Council that the sequential test is applicable in this case. Although the Council did not comment on an appeal decision, reference APP/P1750/W/21/3267182, I have found it is not comparable to the appeal scheme and does not indicate that the Council should have taken a different decision.
11. The Council has explained, albeit briefly, in its officer report, why it considers conditions would not overcome its concerns. As can be seen from the appeal decision, I have found it would not be possible to address planning harm arising from the proposal through the use of conditions and have dismissed the appeal. It follows that the Council has not prevented or delayed development

which should clearly be permitted having regard to the development plan, national policy and other material considerations.

Conclusion

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

M Savage

INSPECTOR