



Costs Decision

Site visit made on 26 July 2022

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5TH AUGUST 2022

Costs application in relation to Appeal Ref: APP/N1920/X/21/3275269 4 Markham Close, Borehamwood WD6 4PQ

- 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 Philip Tse for a full award of costs against Hertsmere Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a loft conversion with rear dormer and front skylights.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). "Unreasonable" has its ordinary meaning, as established by the Courts¹. Paragraph 031 advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. An award of costs was sought on both procedural and substantive grounds at the time the appeal was submitted. Summarised briefly, the applicant's case is that the Council behaved unreasonably by not granting an LDC when they had previously granted a similar application at a nearby property. This resulted in the applicant incurring wasted costs, including those involved in engaging professional advice to prepare and submit the application and paying the relevant application fee. As far as I have been made aware, the Council made no response to the costs application.
4. The circumstances where a Council's behaviour and actions at the time of the application can be taken into account in considering whether costs should be awarded are largely referenced in the PPG at paragraphs 048 and 049. These include where a Council have failed to determine or refused an application without substantive reasons which delayed or prevented otherwise acceptable development. Nevertheless, similar circumstances do not apply in this instance, as the Council advanced substantial evidence to support their decision to refuse the LDC application. On assessing the available evidence, I reached similar conclusions to the Council. Any delay in determining the application has

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

therefore had no practical effect on whether the development for which an LDC was sought could proceed. In terms of the work involved in preparing and submitting the application, including payment of the relevant fee, the PPG paragraph 033 also makes it clear that costs cannot be claimed for the period leading up to the Council's decision.

5. There was no clear and compelling evidence which would indicate that the Council had acted in a manner similar to the examples of unreasonable behaviour relating to the procedures at the appeal, set out in the PPG at paragraph 047. As a result, I am not persuaded that there has been any procedural unreasonableness on the part of the Council. Furthermore, to my mind the Council have not acted in a manner similar to any of the other examples of unreasonable behaviour relating to the substance of the matter under appeal, set out in the PPG at paragraph 049. Therefore, the Council has clearly substantiated its case in these proceedings.
6. In reaching the above findings, I can fully appreciate that the applicant feels a sense of having been misdirected into submitting their application following the granting of an LDC in respect of similar development at a nearby property. However, any administrative shortcoming by the Council in respect of an application made some time ago at a different property can have no bearing on whether costs should be awarded in relation to this appeal. The burden on proving the relevant facts in an LDC application ultimately rests with an applicant.
7. Accordingly, the conditions for an award of costs in the PPG at paragraph 030 have not been met.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR