



Costs Decision

Site visit made on 11 August 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2022

Costs application in relation to Appeal Ref: APP/W3520/X/21/3284571 Grange Farm Lodge, Potash Lane, Wyverstone, Suffolk IP14 4SL

- 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 Gee Warner for a full award of costs against Mid Suffolk District Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the fabrication of parts for use in the restoration of motor vehicles, repair of modern classic motor vehicles.
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Decision

1. The application for an award of costs is allowed in the terms below.

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. Awards against a party may be either procedural or substantive.
3. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications.
4. The Council refused the LDC application on the basis that the use is contrary to a Planning Enforcement Notice dated 29 October 2015, which came into effect without challenge on 10 December 2015 and is not lawful pursuant to section 191(2)(b) of the Act. However, section 191(4) makes it clear that it is the lawfulness of the use at the time of the application that should be considered.
5. From the evidence provided by both parties, it is clear that the LDC application was made prior to the enforcement notice coming into effect. The Council's decision to refuse the application on the basis that it was contrary to a Planning Enforcement Notice was therefore unreasonable.
6. An officer of the Council wrote to the appellant and advised that 'the onus of proof is on the applicant to prove beyond reasonable doubt that what is being applied for is lawful'. While the standard of proof on an appellant in LDC appeals is 'on the balance of probabilities' and not the criminal standard, which is 'beyond reasonable doubt', the officer who wrote the email did not deal with the LDC application. Given the Council's reason for refusal, I have no reason to believe that the incorrect standard was used in determination of the application.
7. I note that the Council carried out consultation on the LDC application. Although there is no statutory requirement to consult third parties including

parish councils or neighbours, the Planning Practice Guidance (PPG) advises it may be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. I do not believe, therefore, that the Council was unreasonable in consulting on the application.

8. While I have found that the appellant has not discharged their burden of proof, on the balance of probabilities, and have dismissed the appeal, the Council refused the LDC application for flawed reasons. The appellant has appealed on the basis of the Council's refusal and has incurred wasted expense in responding to the Council's refusal in this regard.
9. Although the Council has not submitted any information to defend the appeal, had the Council dealt with the LDC application properly, the appellant may have chosen not to appeal, or may have presented a different case.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Conclusion

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mid Suffolk District Council shall pay Mr Gee Warner, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mid Suffolk District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Savage

INSPECTOR