



Costs Decisions

Site visit made on 9 August 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 OCTOBER 2022

Appeal A:

**Costs application in relation to Appeal Ref: APP/D5120/W/21/3285393
West Lodge, Russell Close, Bexleyheath, Bexley DA7 4HX**

- 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 Mr Motzen for a partial award of costs against the Council of the London Borough of Bexley.
 - The appeal was against the refusal to grant approval required under Class O, Part 3, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) to convert the building into 9 residential units.
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Appeal B:

**Costs application in relation to Appeal Ref: APP/D5120/W/21/3285391
West Lodge, Russell Close, Bexleyheath, Bexley DA7 4HX**

- 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 Mr Motzen for a partial award of costs against the Council of the London Borough of Bexley.
 - The appeal was against the refusal to grant approval required under Class O, Part 3, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) to convert the building into 8 residential units.
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Decision

1. In respect of both Appeal A and Appeal B, the application for an award of costs is partially allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the Guidance) 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. In respect of both appeals, the Council's Appeal Statement refers to changes in legislation, and specifically amendments to the GPDO which refers to the nationally described space standard. The Council submits that the proposals would fail to accord with the requirements of the GPDO in respect of this amendment.

4. However, the transitional and saving provisions of the amendment to the GPDO which inserted the requirements referred to by the Council states that the amendment does not have effect where the relevant application for prior approval is submitted before 6 April 2021. As the applications for both of these appeals were submitted prior to that date, the changes in legislation referred to by the Council are not in effect in the consideration of these proposals.
5. The appellant correctly states that the appeal proposals are bound to be considered under the legislation as drafted prior to the amendments. The Council has therefore mistakenly applied the amendments, which amounts to unreasonable behaviour. The appellant has been put to unnecessary expense in addressing this issue.
6. In its response on the matter of costs, the Council refers to the appellant's failure to provide information regarding transport and noise. However, the appellant's costs application does not relate to those matters, and specifically relates to the new point raised by the Council in respect of changes in legislation. The Council has not addressed the appellant's claim on that issue.
7. I conclude that in respect of both Appeal A and Appeal B, the Council has behaved unreasonably, with the result that the appellant has directly incurred unnecessary and wasted expense in addressing the matter of changes in legislation as referred to by the Council. Having regard to the provisions of the Guidance, a partial award of costs in respect of both Appeals is therefore justified.

Costs Order

8. 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, in respect of both Appeal A and Appeal B, the Council of the London Borough of Bexley shall pay to Mr Motzen, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding on the matter of changes in legislation as referred to in the Council's Appeal Statements; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The appellant is now invited to submit to the Council of the London Borough of Bexley, to whom a copy of these decisions has been sent, details of those costs with a view to reaching agreement as to the amount.

David Cross

INSPECTOR