

Costs Decisions

Site inspection on 5 October 2022

by John Whalley

Inspector appointed by the Secretary of State

Decision date: 10 October 2022

Costs application A

**Application by Cheshire East Council made in connection with
appeal ref: APP/R0660/X/22/3299585
Bridge Cottage, Bradwell Road, Bradwell, Sandbach CW11 1RG**

- The application was made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
 - The application was made by Cheshire East Council for a full award of costs against Miss Stephanie Danford.
 - The appeal was made by Miss Stephanie Danford against the refusal of the Council to issue a certificate of lawful development in respect of the proposed replacement of existing timber shed with a tiled roof brick built outbuilding measuring 2m x 4m at Bridge Cottage, Bradwell Road, Bradwell, Sandbach CW11 1RG.
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Decision

1. An award of costs is not made.

Submissions made by Cheshire East Council

2. The Council said the Appellant Miss Danford applied for a lawful development certificate, requiring them to audit the proposal against The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order).
 3. The proposal was for an outbuilding located beyond the principal elevation of the Appellant's dwelling, which was not permitted under Schedule 2, Part 1, Class E (c) to the Order. A refusal was issued, justified by a clear delegated report. The report included a final paragraph advising the Applicant to submit a householder planning application.
 4. The Council's advice had been ignored. Instead, an unnecessary appeal was lodged, supported by arguments that barely referenced the Order. The Appellant's appeal statement further clarified that the outbuilding would be located beyond the principal elevation, contrary to the law, further supporting the Council's decision.
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5. Before drawing the Council into the appeals process, the Appellant had a responsibility to fully understand the appeals process and its implications before drawing the Council into appeal. It was clear that did not take place. Whilst applicants 'can' appeal, it is reasonable to expect them to first explore whether they 'should'.
6. If it was accepted that the appeal was unnecessarily lodged and the Council's time wasted in response, they should have their costs.

Response by Miss Danford

7. Miss Danford received a letter from Cheshire East Council with the decision notice, application number 22/1173C. That letter clearly stated 'If you are aggrieved by our decision to refuse planning permission for the proposed development you can appeal' with details of how to appeal. That was done. There was no mention about having to pay costs if an appeal failed.
8. The Council validated the appeal. If they felt there were no grounds for appeal, they should have said so at that time. The Council had wasted their time and that of the Applicant. She had been severely misled. Asking her to pay the Council's costs was ridiculous.

Inspector's conclusions

9. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process.
10. The Council said the appeal had been unnecessary. The Appellant had no prospect of success. I agree, as a replacement shed in the same spot as the existing dilapidated shed would clearly not be permitted by the concessions set out in the General Permitted Development Order. However, the lawful development application process might not have been pursued had the Council been in a position to respond to Miss Danford's 21 March 2022 query, asking the Council if planning permission was required to replace the shed. The Council's reply of 23 March said: *"Unfortunately the informal permitted development enquiry service is currently unavailable due to unusually heavy workloads."* The Council went on to say: *"To ascertain whether planning permission is required you can apply for a Certificate of Proposed Lawfulness which is a formal planning application and this will confirm whether full planning permission is required."* In my view, that response was singularly unhelpful. Not just because it should have taken scarcely any more time to give an opinion than to send out a pro-forma response, but that the wording almost implies that a lawful development certificate application is the same as a planning permission application.
11. It appears that Miss Danford had little knowledge of the provisions of the Order. If there had been a better response to her 22 March query, both parties' time wasting could have been averted. As it was, the Council's 23 March response failed to produce a sensible outcome or an understanding of appropriate procedures.

12. It would have been good practice for the Council to have advised Miss Danford that her proposal to replace the shed in the front garden of her home clearly required planning permission but that she could repair the existing shed if that was practicable without the need for planning permission. If the shed had to be replaced and the only available location was in front of the house, Miss Danford should have been told that planning permission would be required, preferably with an indication of the likelihood of success.
13. Miss Danford's lawful development certificate application purporting to show that planning permission was not needed to build a new shed on this site was not the appropriate procedure. The application had no prospect of success. Nor did the appeal. The suggestion in the Council's report that Miss Danford should make a Householder application for planning permission was too late to be helpful.
14. It may be incumbent on an applicant for a certificate of lawfulness to have some understanding of sections 191 to 196 of the Town and Country Planning Act. But it is also a reasonable expectation that a local planning authority should offer some guidance on the appropriateness or otherwise of procedures adopted.
15. The time the Council may have spent dealing with the application and the subsequently misguided appeal should have been minimal. It could have been averted if suitable consultation beforehand had taken place.
16. An application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. In my view, that was not done. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against Miss Danford is not justified.

COSTS ORDER

17. No order as to costs is made.

Costs application B

Application by Miss Stephanie Dunford made in connection with appeal ref: APP/R0660/X/22/3299585 Bridge Cottage, Bradwell Road, Bradwell, Sandbach CW11 1RG

- The application was made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
- The application was made by Miss Stephanie Danford for a full award of costs against Cheshire East Council.
- The appeal was made by Miss Stephanie Danford against the refusal of the Council to issue a certificate of lawful development in respect of the proposed replacement of existing timber shed with a tiled roof brick built outbuilding measuring 2m x 4m at Bridge Cottage, Bradwell Road, Bradwell, Sandbach CW11 1RG.

Decision

18. An award of costs is not made.

Submissions made by Miss Stephanie Danford

19. The application was for a full award of costs.
20. Miss Danford contacted Cheshire East Council on 21 March 2022 explaining her project to build a new shed in the front garden of her home. She was advised she would need to apply for a certificate of proposed lawfulness. That was done, the fee of £131 paid. As it was later understood that full planning permission was required, that money had been wasted. The Council's letter invited an appeal. Cheshire East Council should have sufficient knowledge to advise that the proposal would need full planning permission. That would have prevented 5 months of Miss Danford's time being wasted.
21. The certificate application refusal should not have given the right to appeal. The Council had wasted the general public's time over planning applications. They showed a lack of staff education that had resulted in most of Miss Danford's time being wasted. She had been misled into thinking she could appeal the case, presumably with some prospect of success.

Response by Cheshire East Council

22. The Appellant's email dated 21 March 2022 introduced the proposed scheme. It asked whether planning approval would be needed. The proposed location of the shed was not cited. The Council replied: "*To ascertain whether planning permission is required you can apply for a Certificate of Proposed Lawfulness which is a formal planning application, and this will confirm whether full planning permission is required*".
23. An application for a certificate was received and refused as the outbuilding would be beyond the dwelling's principal elevation. The advice was that to continue the scheme, full planning permission should be applied for.
24. With regard to the accusation that the Council "invited" the Appellant to appeal, it was not in the Council's interest to invite applicants to challenge its planning decisions. The decision notice simply set out the Applicant's rights and procedure to appeal the decision in neutral/factual language.
25. It was not unreasonable for the Council to advise submission of a certificate of lawfulness application in response to the Appellant's initial email. A refund should not be issued.

Inspector's conclusions

26. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process.
27. As may be inferred from my comments upon the Council's costs claim, there has been a degree of failure by both parties to find a more rational

and workable solution to what was otherwise a simple and straightforward case. A problem arose from an inadequate Council response to Miss Danford's 21 March query. But where no informal Council guidance was available, Miss Danford could have sought to gain a better understanding of the certificate of lawfulness procedure and to know more of the application of sections 191 to 196 of the Town and Country Planning Act.

28. An application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. In my view, that was not done. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against Cheshire East Council is not justified.

COSTS ORDER

29. No order as to costs is made.

John Whalley

INSPECTOR