
Costs Decision

Site visit made on 24 August 2022

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 12 October 2022

Costs application in relation to Appeal Ref: APP/K5600/X/22/3299065 15 Pembroke Place, London W8 6ET

- 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 Raj Sharma for a full award of costs against the Council of the Royal Borough of Kensington and Chelsea.
 - The appeal was against the refusal of a certificate of lawful use or development for the installation of air source heat pump on the roof.
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Decision

1. The application for an award of costs is 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 and wasted expense in the process.
3. Paragraph 049¹ of the PPG advises that local planning authorities could be at risk of a substantive award if they behave unreasonably with respect to the substance of the matter under appeal, for example by unreasonably refusing an application or by unreasonably defending an appeal. The PPG makes it clear that where a local planning authority have exercised their duty to determine applications in a reasonable manner, they should not be liable for an award of costs².
4. The appellant argues that the Council behaved unreasonably by failing to inform themselves of the requirements of the MCS Planning Standards³ or to request confirmation from the applicant that the microgeneration certification scheme process had been followed. Instead, the Council suggested alternative locations for the air source heat pump (ASHP) that were not technically feasible and therefore acted unreasonably in refusing the application. As a result, the applicant incurred professional fees in seeking advice from the Council following the refusal and appealing, and delays in completing the development.
5. However, the PPG sets out that in the case of an application for a certificate of lawful use or development, it is the applicant's responsibility to provide

¹ Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

² Paragraph: 050 Reference ID: 16-050-20140306 Revision date: 06 03 2014

³ Microgeneration Installation Standard: MCS 020 MSC Planning Standards for Permitted Development installations of Wind Turbines and Air Source Heat Pumps on Domestic Premises Issue 1.3

sufficient information to support an application⁴. I note that the applicant stated in an email of 20 December 2021, prior to the refusal of the application, that the first floor rear terrace would not be a workable solution as it would reduce the outside amenity space for the dwelling and would make the terrace unusable due to the emission of cold air. However, this email does not specifically state that the ASHP could not function on the rear terrace. The confirmation from the heat technician that the ASHP could not be located on the rear terrace for health and safety reasons is dated 11 January 2022, after the application was refused. Moreover, the applicant did not confirm that the loft was not a feasible option for the ASHP until his final comments on the appeal.

6. While the Council does not have technical expertise in the siting of ASHPs, it was justified in questioning whether the requirements of Class G.3(b) and (c) will be satisfied, in its determination of the application. Although I have granted the certificate, the decision is on the basis of the evidence before me at appeal.
7. For the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

N Thomas

INSPECTOR

⁴ Paragraph: 006 Reference ID: 17c-006-20140306 Revision date: 06 03 2014