



Costs Decision

Site visit made on 8 November 2022

by Siobhan Watson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2022

Costs application in relation to Appeal Ref: APP/V0510/X/21/3281916 17 Tower Court, Tower Road, ELY, CB7 4XS

- The application is made under section 89 (Listed Buildings and Conservation Areas) Act 1990 and Schedule 3 of the Local Government Act 1972, section 250(5).
 - The application is made by Mr Nicholas Sweeney for a full award of costs against East Cambridgeshire District Council.
 - The appeal was against the non-determination of an application for a Certificate of Lawful Proposed Works (CLPW) for "Replace internal doors with wood effect doors. Remove existing floor coverings and install wood effect vinyl planks with underlay to floor surface of combined kitchen and lounge".
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour for both but the list is not exhaustive. The application was made in writing and therefore there is no need to rehearse the detailed points made.
4. The Council failed to notice the extent of what had been applied for even though it was clear on the application form. Following the issue of the CLPW The Conservation Officer repeatedly claimed that it was not clear what had been applied for even though the appellant pointed out that it was stated on the application form multiple times. Given this correspondence, it is clear that there is no reasonable justification for the Council's failure to determine the whole of the application. It appears to me that the Council simply did not read the application properly. The failure to determine part of the proposal therefore constitutes unreasonable behaviour on the part of the Council.
5. I note the applicant's comments that the Planning Manager informed him that he had a right of appeal under the Town and Country Planning Act 1990, which is incorrect as the right of appeal in this case is under different legislation. Information in respect of the 1990 Act was also erroneously sent out with the

CLPW. In addition, the Conservation Officer informed the applicant that he had no right of appeal at all. I accept that the letter the Council sent to the applicant, acknowledging the registration of his application, explained that in the case of non-determination, an appeal can be made under Section 26K of the Planning (Listed Building and Conservation Areas) Act 1990. However, the mixed messages, including patently wrong advice, which were given to the applicant, must have been confusing.

6. Nevertheless, the Council twice offered to determine a re-submitted application. These offers were made by email on 4th and 11th May. Crucially, one of the offers was within the 11th May email in which the Conservation Officer provided the wrong advice that there was no right of appeal. It was in this email that the Conservation Officer advised that an application for another certificate could be processed quickly, stating that it could be done within a week. The correspondence from the Conservation Officer gave a strong indication that such a certificate would be issued.
7. Whilst I appreciate the frustration of the applicant, it would have been a fairly quick and simple matter to resubmit the application. In effect, this would have achieved what the applicant had originally asked for when raising the omission with the Council, i.e., to issue a corrected certificate.
8. The PPG advises that before making any appeal, the party seeking permission should first consider re-engaging with the local planning authority to discuss whether any changes to the proposal would make it more acceptable and likely to gain permission¹. The spirit of this guidance can be applied in this case. Furthermore, Procedural Guide: Planning Appeals – England says that appeals should be made only as the last resort.²
9. As the offer to quickly process a fresh application for a CLPW was made early on, as opposed to some time after issuing the wrong advice, an appeal could have been avoided.
10. I have found unreasonable behaviour on the part of the Council. However, the evidence before me is that an appeal could have been avoided. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the applicant's claim for costs fails.

Siobhan Watson

INSPECTOR

¹ Paragraph: 001 Reference ID: 16-001-20140306

² Paragraph 1.2.1