



Costs Decision

Site visit made on 8 December 2022

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Costs application in relation to Appeal Ref: APP/T51050/X/22/3298534 34 Napier Road, Wembley NA0 4UA

- 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 Shalin Shah for a full award of costs against the Council of the London Borough of Brent.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use for the proposed use of existing outbuilding as a family annexe.
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Decision

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

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs can only be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellant applied for a lawful development certificate (LDC) for a proposed use of an existing outbuilding as a family annexe. Despite the application being accompanied by information showing that the outbuilding had been completed in July 2014, the Council refused to validate the application for several reasons. Firstly, in their opinion, an LDC for the existing building, under s191, was required. Secondly, the elevation and floor plans of the existing building had been provided in the wrong file format, and thirdly, the elevation and floor plans did not print out to scale.
4. The application before the Council was one for a proposed use of an existing building made under s192 of the 1990 Act. It is that application that should have been validated by the Council. The application was accompanied by the documentation required by Article 39 of the DMPO. In its final comments on the appeal, the Council conceded that they should have had regard to s192 and that they would have issued an LDC, had they validated the application.
5. The PPG states that a local planning authority is at risk of an award of costs if they behave unreasonably with respect to the substance of the matters under appeal, for example, by unreasonably failing to determine applications. By failing to validate the application, the Council has delayed development which should clearly have been granted an LDC. This behaviour gives rise to a substantive award of costs.

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

7. 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 the Council of the London Borough of Brent shall pay to Mr Shalin Shah, 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.
8. The Applicant is now invited to submit to the Council of the London Borough of Brent, details of those costs with a view to reaching agreement as to the amount. If the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Madge

INSPECTOR