



Costs Decision

Site visit made on 4 January 2023

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2023

Costs application in relation to Appeal Ref: APP/D1835/X/22/3299282 101 Bath Road, Worcester WR5 3AE

- 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 Daniel Lynagh for a full award of costs against Worcester City Council.
 - The appeal was against the deemed refusal of a certificate of lawful use or development for a roof extension.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application sought a Lawful Development Certificate (LDC) for an extension to the roof of the outrigger. The basis for the appellant's claim for costs is that the council acted unreasonably and that this has directly caused them to incur unnecessary or wasted expense in the appeal process. The reason being that the council 'casually dismissed' the proposal without justification and ignored the legislation and guidance within the Technical Guidance¹ and a more recent appeal decision² submitted by the appellant to support their view that the proposal should have been considered lawful. It also appears that the appellant considers the length of time taken by the LPA to issue a decision may have been due to the council searching for a reason to refuse the LDC.
4. The council based its opinion on its interpretation of the conditions attached to Class B, guidance contained within the Technical Guidance and an appeal decision³ dated 28 June 2019. Previous appeal decisions are a material consideration which councils should take into account. Nevertheless, an appeal decision, dated 4 December 2020, was provided by the applicant as the basis to support their application for the LDC. In that appeal, an Inspector adopted a

¹ The Department for Communities and Local Government's publication "Permitted development rights for householders – Technical Guidance September 2019"

² APP/Q1445/X/20/3252666

³ APP/Q3630/X/19/3220537

different approach in dealing with an appeal for an L shaped dormer extension to the main roof and the outrigger.

5. The council maintained its opinion that as the proposed dormer above the rear outrigger would extend beyond a portion of the existing rear-facing wall of the main part of the original dwellinghouse, it would fail to comply with B.2(b)(ii) of Class B. While the appellant's reference to the Technical Guidance was noted, it considered that as the proposal did not involve L-shaped dormers, the guidance was not considered to be relevant. Whether or not any particular extension is an L-shaped dormer or not is, in many cases, a matter of planning judgement, and I consider that the Council did not act unreasonably in concluding that this extension was not, notwithstanding that I have come to a different view.
6. Regarding the delay in dealing with the application and the appellant's concerns that the council was searching for a reason to refuse the proposal, the council expressed concerns about the plans which showed the property without a kitchen. Following the submission of revised plans from the applicant on 28 April 2022, a refusal was issued two weeks later. The period for determination of the application was lengthy being 5 months, however, there is no evidence to indicate that the council was being obstructive and searching for reasons to refuse the application for the LDC.
7. The costs regime is intended to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, and to encourage local planning authorities to properly exercise their development management responsibilities. The council was entitled to come to a different view based on their planning judgement. I am satisfied, having regard to the facts and circumstances, that there was no unreasonable behaviour on the part of the Council which led the appellant to incur unnecessary or wasted expense in connection with the appeal. I conclude accordingly that an award of costs, either partial or in full, is not justified and the costs application should not succeed.

S A Hanson

INSPECTOR