
Costs Decision

Site visit made on 29 November 2022

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd February 2023

Costs application in relation to Appeal Ref: APP/C4615/D/22/3306054 3 Carters Lane, Dudley, Halesowen B62 0DH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr K Sahota for a full award of costs against Dudley Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for a rear dormer.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and, that the unreasonable behaviour has directly caused the party applying for costs to incur unnecessary and wasted expense in the appeal process. Costs cannot be claimed for the period during the determination of the planning application. However, behaviour and actions at the time of the planning application can be taken into account in consideration of whether or not costs should be awarded.
3. Paragraph 047 of the PPG¹ indicates that local planning authorities will be at risk of a procedural award being made against them for reasons including lack of co-operation with the other party. Paragraph 049 of the PPG² indicates that local planning authorities will be at risk of a substantive award being made against them for, amongst other things, not determining similar cases in a consistent manner and failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission, where there has been no material change in circumstance.
4. The applicant claims that the Council acted unreasonably in not advising them that further information was required, not advising them that the plans did not match what had been built on site, and that there was concern over the extent of the building line. Furthermore, the applicant claims are that the Council acted unreasonably in refusing the dormer when one has previously been approved.
5. In the applicant's statement of case it sets out that a pre-application discussion and a meeting on site with the Council took place. However, I do not have any

¹ Paragraph: 047 Reference ID: 16-047-20140306

² Paragraph: 049 Reference ID: 16-049-20140306

substantive evidence of the detail of what these discussions were, in both the pre-application telephone call (appendix C) and the extent of what was discussed in the site meeting.

6. An email dated 4 January 2022, from the Council, sets out that planning permission would be required to incorporate a dormer into the development approved under P21/1705. This is clear that the Council advised that, at that time, planning permission would be required for the whole of the previously approved development and the proposed dormer. Therefore, I consider the Council acted reasonably in their approach to drawing the applicant's attention to the potential for discrepancies between the approved plans and what was being building.
7. Furthermore, the evidence before me indicates that the Council was in communication with the applicant and had advised them of the discrepancies. The applicant submitted the application for the dormer as shown on the plan. The Council considered the application on the basis of what was submitted, as they are entitled to and, it is clear within the officer report that the inconsistencies resulted in the decision to refuse on insufficient information.
8. With regard to consistency with the approved rear dormer, as detailed in my formal Decision, a dormer has previously been approved at the appeal property. However, there are material differences between the previous granted approval and the plans submitted, thus there has been a material change in circumstances. Moreover, the Council clearly set out the reasons why the development was not acceptable in their report and that the dormer could not be considered separately from the other extensions.
9. I therefore have no substantive evidence that the Council has acted unreasonably in this case. As such, there can be no question that the applicant incurred unnecessary or wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated, thus the award of costs is not justified.

K Townsend

INSPECTOR