
Costs Decisions

Site visit made on 21 February 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2023

Costs application in relation to Appeal A Ref: APP/Z1510/X/21/3272293 33 Francis Way, Silver End, Essex CM8 3QX

- 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 Jordan Billinton for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the demolition of a single storey rear extension to a dwelling in a conservation area.
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Costs application in relation to Appeal B Ref: APP/Z1510/W/21/3267963 33 Francis Way, Silver End, Essex CM8 3QX

- 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 Jordan Billinton for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission for demolition of single storey rear extension to rear of single dwellinghouse.
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Costs application in relation to Appeal C Ref: APP/Z1510/W/21/3269480 33 Francis Way, Silver End, Essex CM8 3QX

- 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 Jordan Billinton for a full award of costs against Braintree District Council.
 - The appeal was against the refusal of planning permission to brick-up the window of a bathroom on the first floor on the side elevation.
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Decisions

1. The applications for an award of costs are 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 or wasted expense in the appeal process. Awards against a party may be either procedural or substantive.
3. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include preventing or delaying development which should clearly be permitted, failure to produce evidence to substantiate each reason for refusal on appeal, acting contrary to, or not following, well-established case law, refusing to provide reasonably requested information, when a more helpful

approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.

Appeal A

4. The main thrust of the applicant's costs application in respect of Appeal A is that the Council did not engage with them prior to determination of the application, that the Council refused the application on inaccurate grounds, failed to provide the Article 4 Direction or inform the applicant of any concern regarding the legal requirements for demolition. The Council is also asserted to refer to factors which are irrelevant to the application in its officer report.
5. While the National Planning Policy Framework 2021 (the Framework) advises that local planning authorities should approach decisions on proposed development in a positive and creative way, as explained in my decision letter, planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. As such, it is not clear how amending the proposal to demolish part of a building would have resulted in a different outcome.
6. Moreover, in respect of an application for a LDC the PPG advises that an applicant is responsible for providing sufficient information to support an application. The Council has set out its reasons for refusing the LDC application in a decision notice dated 8 January 2021. Although I have found that the appeal scheme would not be lawful for different reasons to the Council, whether the proposed works would constitute an alteration or demolition is a matter of judgement.
7. While the Council has relied on the judgement in *Shimizu (UK) Ltd v. Westminster City Council* [1997] 1 WLR 168: [1997] 1 ALL ER 481, this is a complex area of planning law. Furthermore, given the applicant's arguments regarding the application of the Town and Country Planning (Demolition – Description of Buildings) Direction 2014, I consider the appeal would still have been necessary. As such, the applicant has not incurred wasted expense.
8. In respect of an LDC, the PPG advises a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. While the Council has not provided the applicant with a copy of the Article 4 Direction, it has provided a copy of the Silver End Conservation Guide (January 1999)(the SECG) which explains the implications of the Direction. Furthermore, the Article 4 Direction was not determinative in terms of the LDC application and so the appeal would have been necessary whether they had received a copy of it or not.
9. Thus, I consider the application for an award of costs in respect of Appeal A should fail.

Appeals B and C

10. With respect to Appeal B only, the applicant asserts that the Council failed to assess and register the application correctly. However, as set out in my decision letter, I have found that the application was registered correctly as an application for planning permission and in this regard, the Council has assessed the application correctly.

11. With respect to Appeals B and C, as with Appeal A, the applicant asserts that the Council's failure to provide a copy of the Article 4 Direction is unreasonable. However, the Article 4 Direction was not determinative in terms of Appeal B, and in respect of Appeal C, the applicant confirms the proposal was designed in accordance with the Silver End Conservation Guide (January 1999)(the SECG) in their Design and Access Statement, which sets out the implications of the Direction on development in the SECA. They were therefore clearly well aware of the implications of the Direction.
12. The applicant asserts that the officer failed to inform their agent of the requirements of additional evidence identified by the Historic Buildings Consultant, deliberately concealing relevant evidence at planning application stage. However, the Council advise that the comments were publicly available on its website, and I have no substantive evidence to the contrary.
13. While the Framework advises that local planning authorities should approach decisions on proposed development in a positive and creative way, it also promotes pre-application engagement. Although discussions had been on-going in relation to application 20/00509/HH, it was open to the applicant to engage with the Council before submitting the applications which are the subject of the appeals before me.
14. Significantly, the applicant confirms on their application forms that they did not seek pre-application advice. Given this and having regard to the limited time period within which Councils have for determining applications, I do not consider the Council was unreasonable in determining the applications on the basis of the information submitted.
15. The Council's reasons for refusing the planning applications for Appeals B and C are clearly set out within its respective decision notices and explained further within its officer reports. The assessment of the effect of a proposal on a conservation area will inevitably involve judgement by the decision maker.
16. With respect to Appeal B, although evidence has been submitted in support of the applicant's case that the rear extension is not a Crittall product, I do not consider the evidence to be determinative proof of its provenance. I have no reason to doubt that the Historic Building Consultant's saw the information submitted by the applicant. Moreover, it is clear from the Historic Building Consultant's comments that they visited the site and drew their conclusions on the basis of their visit.
17. Although planning permission was subsequently granted on appeal, for the demolition of the single storey rear extension, the applicant's statement is dated January 2021, which is before the appeal was determined. Whilst I have found that planning permission should be granted in relation to Appeal B, the Council's case at that time, in my view, was arguable and so I cannot conclude that the Council was unreasonable in this regard.
18. With respect to Appeal C, while I would agree that the design of properties throughout Silver End is not homogenous, it is the repetition of design which I have found would be harmed by the appeal scheme. Significantly, I have agreed with the Council that appeal scheme would harm the Silver End Conservation Area and have dismissed Appeal C. I cannot therefore agree that the Council behaved unreasonably in refusing the application.

19. Thus, I consider the applications for an award of costs in respect of Appeals B and C should fail.

Conclusions

20. Thus, for the reasons given above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

M Savage

INSPECTOR