
Costs Decision

Site visit made on 28 March 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 April 2023

Costs application in relation to Appeal Ref: APP/D5120/X/21/3288110

The Shed, 57 North Cray Road, Sidcup DA14 5EU

- 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 B Stuart for an award of costs against the Council of the London Borough of Bexley.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for an LDC for 'use of land identified for residential purposes'.
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Decision

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

Reasons

2. National Planning Practice Guidance (NPPG) advises that, irrespective of the outcome of the appeal, costs may only 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.
3. The Council has confirmed in their appeal statement that had they determined the application they would have refused it. In that statement the Council commented that, with regard to a site plan submitted with the 2007 LDC application, "...black lines ...appear to delineate other parts of the site that on the balance of probability, could reasonably be considered as the driveway and garden of this property and...the residential curtilage of the land so far as Class C3 is concerned". Other later comments refer to "...the garden area of The Shed...", "...limited area of garden..." and, with regard to an aerial photograph of 2012, "These formed an L-shaped landscape boundary around what could be considered the existing garden area to the dwelling house".
4. The 2007 LDC did not establish the lawfulness of any use of land associated with the residential use of The Shed. But the Council appears to have accepted, in making the aforementioned comments and others, that The Shed has had land around it that could have been considered to be garden and therefore in use for residential purposes. It is, in fact, a matter of common sense that a detached dwelling in a residential plot will inevitably have some land around it, not necessarily all of the plot, that is in use for residential purposes. The Council failed to take the provisions of Section 193(4)(a) of the Act into account when they were considering the application. Had they done so, and engaged with the Appellant's Agent on this matter to discuss the extent of land in accepted residential use, they could have issued an LDC for part of the land. They acted unreasonably in not

doing so and the Appellant has incurred wasted expense, with regard to the part of the land in accepted residential use, in submitting an appeal.

5. The Council did fail, in their statement, to explain their reasons for not reaching a decision on the application within the statutory time period but this has not led to wasted expense. The Appellant could have submitted an appeal against non-determination at the end of the statutory period and it was a matter of choice that he delayed submitting an appeal for many weeks. A significant proportion of the evidence submitted by the Council at appeal stage was irrelevant but this evidence can simply be ignored and has not led to wasted expense. On this point, a Council is at risk of being accused of withholding evidence if they don't submit all available evidence and therefore at risk of a cost award against them. It is therefore not unreasonable for a Council to submit all evidence, whether relevant or not.

6. Other accusations have been made against the Council in relation to the claim for an award of costs but none of these justify an award of costs on either a substantive or procedural basis. However, the Council did act unreasonably in not applying the provisions of Section 193(4)(a) of the Act and the Appellant has incurred wasted expense in submitting an appeal against the intended refusal of an LDC for the accepted use of part of the land for residential purposes. On this basis the claim for an award of costs succeeds.

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 Bexley shall pay to Mr B Stuart the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in submitting an appeal against the intended refusal of an LDC for the accepted use of part of the land for residential purposes.

8. The applicant is now invited to submit to the Council of the London Borough of Bexley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that 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.

John Braithwaite

Inspector