
Costs Decision

Site visit made on 1 March 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2ND MAY 2023

Costs application in relation to Appeal Ref: APP/J0405/X/21/3285955 Land at Normills Yard, Aylesbury Road, Aston Clinton HP22 5AG

- 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 D for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of a certificate of lawful use or development for: the existing general industrial class B2 use of engineering workshop, in breach of condition number 10 of planning permission reference 09/01145/APP, which was granted upon appeal on 15 October 2010 (appeal reference APP/J0405/A/10/2120060/NWF), for the erection of a building for use as an engineering workshop and for storage.
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Decision

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

The submissions

2. The reasons given for the costs application are summarised as follows:
 - The Council failed to substantiate their reason for refusal;
 - The Council failed to have proper regard to case law;
 - The Council did not attribute appropriate weight to the statutory declarations;
 - There was inconsistent decision making in respect of similar cases;
 - The planning officers did not engage with the applicant; and
 - There has been a breach of data protection.
3. I have had regard to the Council's response in reaching my decision.

Reasons

4. Paragraph 030 of the Planning Practice Guidance on Appeals (the PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. Paragraphs 047 and 049 of the PPG provides examples of unreasonable behaviour on the part of the local planning authority. Some that might be relevant to this costs application include:

- Refusing to enter into pre-application discussions, or 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;
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - acting contrary to, or not following, well-established case law; and
 - not determining similar cases in a consistent manner.
6. Although some of these examples relate more to the determination of appeals made under section 78 of The Town and Country Planning Act 1990 as amended, the principles of these can be applied to this case.
7. The advice in the Planning Practice Guidance document on Lawful development certificates was relevant in this case. This advises that an LDC application should not be refused if the applicant's evidence is sufficiently precise and unambiguous, and there is no evidence to contradict or otherwise make the applicant's version of events less than probable. For the applicant to succeed in the appeal, it was necessary for him to demonstrate with precise and unambiguous evidence that there had been a continuous breach of the relevant condition for a period of 10 years or more.
8. In dismissing the appeal, I have concluded that the applicant's evidence lacks the necessary detail of the actual use of the building during the relevant period. I have found such detail to be necessary, having regard to the condition in question, the permitted use of the building, and the use of the building relied on by the applicant to demonstrate the lawfulness of the breach. The Council reached a conclusion similar to mine with regard to the evidence provided; that it lacked in substance, rather than quantity. I am, therefore, satisfied that the Council adequately substantiated its reason for the refusal of the application subject of the appeal.
9. I found most of the evidence to be relevant to the matters considered and it is likely that the vast majority of this would support the applicant's case, had it been accompanied by evidence that was sufficiently precise and unambiguous, detailing the actual use of the building over the 10 year period claimed. I can, therefore, agree that the Council's approach to some of the individual pieces of evidence is unnecessarily dismissive.
10. Of particular note is the Council's treatment of the statutory declarations. Even if I had concluded that these had not been provided in accordance with the relevant legislation, it is unreasonable to regard this evidence as invalid and carrying very little weight. The applicant has made the case that these declarations are in accordance with the legislation. Accordingly, the individuals provided the declarations believing that they would be subject to the sanctions that could be imposed, should they contain false or misleading evidence. Even if it transpired that such sanctions could not be enforced, it would still be appropriate to attribute more than 'very little weight' to the evidence contained in these documents, having regard to the circumstances under which it had been provided.

11. Notwithstanding the above, I have concluded that the evidence provided in the declarations, even when considered together with all other evidence, is not sufficiently precise and unambiguous. Even if the Council had attributed appropriate weight to this evidence, I cannot conclude that it would have reached a different conclusion in the determination of the application subject of the appeal. An appeal would not, therefore, have been avoided.
12. I had regard to the other decisions that were brought to my attention in determining the appeal. As I have noted in my decision, there is a degree of difference in the principal matters considered in those cases when compared to the case before me. In addition to this, I have not been provided with the information that would have been available to the decision maker in those cases. As such, I am unable to make an informed comparison with the other decisions and the case that was before me. I cannot, therefore, conclude that the Council have acted unreasonably by being inconsistent in its decision making.
13. The applicant has referred to correspondence between him and the Council¹ in which he seeks the views of the Council officer on the submission of a further application for a lawful development certificate (LDC). I note that this correspondence comes after the refusal of the LDC application. As such, the officer report would have been available, in which the evidence submitted with the refused application has been considered.
14. The question asked by the applicant in this correspondence relates specifically to another LDC application determined by the Council. Clearly the applicant is drawing comparisons between the information submitted with that LDC application and the information submitted with the LDC application submitted by him. Whilst the officer's response is brief and general, it adequately makes the point that each case must be determined having regard to the evidence submitted in support of the application. The Council could have been more helpful in pointing out the differences between the two cases, whatever they may have been. I do not, however, consider its response to be unreasonable, particularly as it is for the applicant to demonstrate the lawfulness of the matter in question. I have no reason to find that the Council has behaved unreasonably in its engagement with the applicant during the course of the determination of the LDC application.
15. It is not within the remit of this costs application to determine whether there has been a breach of the data protection legislation. Even if there had been, I have no reason to conclude that such behaviour is unreasonable and that it has directly caused the applicant to incur unnecessary or wasted expense in the appeal process.
16. To conclude, whilst some aspects of unreasonable behaviour on the part of the Council have been demonstrated, I cannot conclude that this or any other behaviour has resulted in unnecessary or wasted expense during the appeal process. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR

¹ Email dated 14 December 2021.