



Costs Decision

Site visit made on 2 May 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Costs application in relation to Appeal Ref: APP/K0425/C/22/3293834 Land at Hunts Hill Farm, Hunts Hill Lane, Naphill, Bucks HP14 4RJ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C Birgani for a full award of costs against Wycombe District Council.
 - The appeal was against an enforcement notice alleging the construction of a swimming pool and enclosure.
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Decision

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

The submissions for Mr Birgani

2. These largely relate to concerns over the processing of planning applications made to the Council for the erection of a garage and for the construction of the swimming pool and enclosure. In addition, it is submitted that the Council incorrectly relied upon Policy DM43 when issuing the enforcement notice, failed to carry out a site visit and did not take into account a proposal for mitigation.

The response by the Council

3. The Council provide details surrounding the determination of both applications and explain the relevance of Policy DM43 but have also failed to understand the full grounds of the costs application.

Reasons

4. The Planning Practice Guidance (the Guidance) advises that 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* (my emphasis).
5. Whilst I understand the applicant's frustrations, the power to award costs relates only to those costs necessarily and reasonably incurred *in the appeal process*. In some circumstances costs applications may relate to events that happened before the appeal but these events need to support or demonstrate unreasonable behaviour during the appeal. The Guidance contains headings and lists such as "What type of behaviour may give rise to a procedural award against a local planning authority?". Whilst the lists are not exhaustive, it is clear that the costs regime is there to encourage good behaviour by all parties *during* the appeal.

6. How the Council processed the planning applications for the erection of a garage and for the construction of the swimming pool and enclosure is not considered to be one of those events that support unreasonable behaviour during the appeal. This is because the manner in which the planning applications were dealt with is, in effect, a complaint about the Council's handling of them.
7. The appeal in this case was made in respect of the issue of an enforcement notice, not against the refusal of planning permission for the pool development. The notice was directed at the operational development of a swimming pool and enclosure.
8. The reasons for issuing the notice relied upon Policy DM43, amongst others, and one of the grounds of appeal resulted in a deemed planning application. In determining that application I considered the wording and appropriateness of Policy DM43 to the development. I found that the Council were correct to rely on the policy as the pool enclosure is at some distance from the dwelling and therefore is an outbuilding, as opposed to an extension. It is also reasonable to describe it as a residential outbuilding as it lies within the rear garden of a dwelling.
9. Furthermore, the notice was directed at operational development and so the appellant's submissions regarding section 55(2)(d) of the Town and Country Planning Act 1990 were not relevant, as explained in my decision.
10. With regard to the site visit, the Guidance states that local planning authorities may be at risk of an award of costs if they do not carry out adequate prior investigation prior to the issue of an enforcement notice. The nature of investigative works is not specified in the Guidance as each case is different and gives rises to various considerations but in this case the Council state that they visited the site on 13 and 17 September 2021. The first site visit was carried out by the Enforcement Officer and the second by a Planning Officer.
11. With regard to the proposed mitigation measures, it would appear from the case officer's report on the development that the application was determined as submitted. The applicant states that the application included details of a hedge to screen the development but it appears this was not considered by the case officer. However, it is probable that this oversight would not have changed the Council's conclusions, which then led to the issue of the notice. Whilst the Council's failure to consider the screening was unfortunate, it did not result in wasted expense as the appeal was unavoidable.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

D Fleming

INSPECTOR