



Costs Decision

Site visit made on 1 June 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Costs application in relation to Appeal Ref: APP/H5390/X/22/3296736 2 Emlyn Road, London W12 9TD

- 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 Dr A Ismail for a full award of costs against the Council of the London Borough of Hammersmith and Fulham.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the use of the single-storey outbuilding in the rear garden as a self-contained annexe flat ancillary to the single-family dwellinghouse.
-

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises¹ 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.
3. The PPG explains² that local planning authorities (LPA) are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include failure to produce evidence to substantiate each reason for refusal and acting contrary to, or not following, well-established case law.
4. The main thrust of the applicant's costs claim is that the Council's reasons it would have refused the application had it been able to do so, were irrational and relied upon vague, generalised, and inaccurate assertions about the law. The applicant also considers that the Council misdirected themselves as to whether the proposal would constitute development and whether that development would be lawful.
5. In its statement of case the Council refers to a 'proposed erection of a single storey ancillary outbuilding in the rear garden, following the demolition of existing shed', before concluding that the development would not constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). It is abundantly clear however from the

¹ Paragraph: 030 Reference ID: 16-030-20140306

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

application that the proposal does not seek the erection of a new building but the use of an existing single-storey outbuilding as a self-contained annexe flat.

6. The application also included submissions from Counsel which explained in some detail why it was considered that the proposal did not constitute development, including reference to well-established case law such as *Uttlesford DC v SSE & White [1992]*. Despite this, the Council has made no reference or comment in relation to these submissions or substantiated its reasons why the proposed use of the building would not be lawful, contrary to well-established case law.
7. As can be seen from my appeal decision, I have found that the proposal would be lawful and have allowed the appeal. Had the Council followed the well-established case law it was directed to by the applicant, it is highly likely that the appeal could have been avoided altogether. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated.
8. The PPG also explains³ the circumstances in which costs may be awarded on procedural grounds. It advises that if it is clear that the LPA will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period.
9. If an appeal in such cases is allowed, the LPA may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
10. Though it is apparent from email communications between the Council and the applicant's agent and the Council's subsequent statement of case that they would have not granted the certificate, I have received no reasons from the Council about why a decision was not reached within the relevant time limit. The appeal was not made with any undue haste following the expiry of the statutory determination period. Indeed, the appeal was not made until nearly six months after the expiry of the relevant determination period, and a month after the parties had agreed a 'short extension of time'.
11. In the circumstances I agree that the applicant has been put to the unnecessary cost of an appeal in order to obtain a determination on his application, and that this amounts to unreasonable behaviour by the Council.

Conclusion

12. For the above reasons, I find that unreasonable behaviour by the Council resulting in unnecessary expense, as described in the Planning Practice Guide has been demonstrated and that a full award of costs is justified.

³ Paragraph: 048 Reference ID: 16-048-20140306

Costs Order

13. 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 Hammersmith and Fulham shall pay to Dr A Ismail the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Jones

INSPECTOR