



Costs Decision

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Costs application in relation to Appeal Ref: APP/P1805/X/23/3314062 80 Fairfield Road, Bournheath, Bromsgrove B61 9JJ

- 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 Mark Banham for a full award of costs against Bromsgrove District Council.
 - 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 development described as 'Outbuilding – this will be permitted development pursuant to Class E because: the ground area will not exceed 50% of the curtilage excluding the original dwelling; it will not be forward of the principal elevation; it will not have more than one storey; it will not exceed 4m in height; the eaves will not exceed 2.5m nor be within 2m of the boundary; it will not involve the provision of a veranda, balcony or raised platform; it is not within Article 2(3) land; and it does not exceed in terms of floor space use more than reasonably necessary for the purposes of incidental enjoyment of the dwellinghouse as such'.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The applicant claims that, despite being given far longer than the prescribed period, the Council acted unreasonably by failing to determine the application in a timely manner. Furthermore, the applicant considers that the Council failed to substantiate its case at appeal including failing to follow established case law. The Council has not responded to these points.
4. The PPG advises that if it is clear that the local planning authority 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 Council 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. In the appeal the Council failed to explain their reasons for not reaching a decision within the prescribed period, and therefore the Council's behaviour is unreasonable in that context.
5. In an application for a certificate of lawful use or development, the onus of proof is squarely on the applicant. Class E, Part 1 of Schedule 2 of the GPDO¹ confirms that outbuildings required for purposes incidental to the enjoyment of

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

the dwellinghouse as such, are permitted development, subject to various conditions and limitation. The applicant should show that the outbuilding proposed is required for the incidental purposes stated and that it meets the relevant conditions and limitations.

6. There is no dispute that the proposed outbuilding meets the conditions and limitations. The Council considered however that, given its scale and footprint which exceeded that of the host dwelling, the proposed outbuilding would be excessive and take the proposal outside the definition of a building reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. The Council confirmed within its statement of case that it did not consider that the proposal complied with the terms Class E, Part 1 of the GPDO. Therefore, notwithstanding the unreasonableness of the Council's behaviour in failing to determine the application in a timely manner, the appeal would still have been brought to address this specific objection.
7. Notwithstanding the reference to an occupancy condition, the lack of a driveway to the proposed building, and potential future extensions to the host dwelling which I found to be of no relevance to the determination of the appeal, the Council's statement of case outlined its position in respect of the principal point of dispute. The statement of case also included reference to relevant case law.
8. As set out in my appeal decision, I do not agree with the Council's position and have concluded that the deemed refusal was not well-founded. However, this does not mean that the Council has acted unreasonably. Whether or not the proposed development is incidental to the enjoyment of the dwellinghouse is a matter of planning judgement, and I do not find that the Council acted unreasonably in this regard.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Jones

INSPECTOR