



Costs Decision

Site visit made on 9 October 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2023

Costs application in relation to Appeal Ref: APP/P1805/X/23/3321452 Arosa, The Holloway, Alvechurch, Worcestershire B48 7QA

- 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 Karl Cross-Watson for a full award of costs against Bromsgrove District Council.
- The appeal was against the part refusal of a certificate of lawful use or development for a proposed side extension and swimming pool outbuilding.

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 preventing or delaying development which should clearly be permitted, failing to produce evidence to substantiate each reason for refusal, or not reviewing their case promptly following the lodging of an appeal against the refusal of planning permission.
4. The main thrust of the applicant's case is that when assessing the height of the eaves of the proposed swimming pool outbuilding, the Council failed to take into account both Article 2(2) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) and the Governments Technical Guidance³ (TG).
5. The Council in its decision notice specifically referred to the TG and relied on the sentence "Under Class E the maximum height of the eaves on any part of the building is 2.5m", which is found on page 43 of the latest TG. However, the preceding paragraph directs the reader to further guidance and examples earlier in the TG which include measuring the height of eaves on ground that is sloping. This was specifically highlighted by the appellant in the application and

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

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

³ The Ministry of Housing, Communities and Local Government: Permitted development rights for householders – Technical Guidance, September 2019

repeated in the appeal submissions, along with examples of similar appeal decisions being provided.

6. Even if it had not been highlighted, the Council should have known that the common guidance provided in the TG indicates that the height of the eaves would accord with paragraph E.1 (f) of Schedule 2, Part 1, Class E of the GPDO. Instead, the Council chose not to apply the aforementioned guidance or indeed the interpretation of how the height of a building is to be construed as provided in Article 2(2) of the GPDO. Had they done so, the appeal process could have been prevented.
7. The applicant has also stated that there was a lack of communication and willingness from the Council to discuss any concerns that they had during the application process. However, in an application for a certificate of lawful use or development the burden of proof is on the appellant to make their case and provide the necessary information. These matters have not therefore directly led to unnecessary or wasted expense.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified as the applicant was put to the expense of making an appeal that should not have been necessary.

Costs Order

9. 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 Bromsgrove District Council shall pay to Mr Karl Cross-Watson the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office is not agreed.
10. 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