



Costs Decision

Site visit made on 8 November 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2023

Costs application in relation to Appeal Ref: APP/C1435/W/22/3309413 Park Lodge, Lye Green, Crowborough TN6 1UU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ryan Saunders for a full award of costs against Wealden 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 planning permission for the demolition of two existing buildings and the erection of a single replacement outbuilding remaining subservient to the main dwelling.
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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 has sought a full award of costs. The basis of the claim is that the Council failed to take proper account of the previous use of the site and permitted development, thereby reaching conclusions contrary and inconsistent with the site's recent planning history. Furthermore, the Council was said to be slow in making its decision on the validity of the application; the case officer was not contactable by phone; the conduct at the site visit was not acceptable; and the approach was generally heavy handed.
4. The basic facts as I see them are that the building sought was a home office and that it was on land that was not within the residential curtilage of a dwelling. The new building would occupy part of a site that had been subject to notification under Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It is also possible that the application site included some land that was not encompassed by this notification and which the applicant considers to be agricultural.
5. The proposed use was clearly different from the uses permitted under Class R and from any claimed agricultural use of the remaining parts of the land. The proposal therefore represented a change. Thus, neither the claimed permitted development on the site nor the stated agricultural use of the land saved the submission from being invalid.

6. Indeed, the Council did make the point early on in their correspondence that a home office was not the same as the uses permitted by Class R and so was not covered by the previous notification, even if the land was considered to have benefitted from that change.
7. The notification procedure under Class R did not entail the Council undertaking a site visit or making a formal determination. The onus for compliance with the stated requirements remained with the applicant. The Council's subsequent opinion in relation to the use of the land and the fact that it differed from the applicant's opinion could not be said to be inconsistent decision making as the Council had not previously made a decision in that regard.
8. From reviewing the correspondence between the main parties, it is clear that relations became more and more fractious as time went on. Whilst I do not doubt that the Council Officers were trying to be helpful, the issues of validation and the planning merits of the scheme seem to have become conflated as discussions progressed. It certainly appears to have led to some of the confusion and misunderstandings that then resulted. Similarly, some of the language and terminology that was used did not assist the applicant in appreciating the nuances around the issues.
9. The Council did offer a view on what other options might be possible to move things forward. The applicant placed a different interpretation on the situation to that of the officers. As a result, the applicant saw the officers as being heavy handed in their approach rather than helpful, particularly as it appeared to contradict what the applicant considered to be a correct assessment of the situation.
10. It seems to me that had the two parties been able to discuss matters 'face-to-face' rather than continue the exchange of emails, some of the misunderstandings might have been avoided. The applicant's frustration at not being able to speak to the case officer on the phone was entirely understandable although I note that the Team Leader's email contained what appears to be a direct line phone number. It would have been open to the applicant to speak directly to the Team Leader.
11. The applicant was also concerned with how the site visit was conducted. Regardless of whether or not there was prior arrangement of the visit or the level of interaction with the owners on site, a site visit by a planning officer would be a normal part of the process. It informed the officers' opinions of the situation but did not alter the fact that the location plan did not meet the necessary requirements or that the proposal was materially different from the claimed agricultural or Class R uses. Any complaints regarding a failure to meet professional standards in how the site visit was conducted (or any other interactions) would be outside the remit of this appeal and are not grounds for a successful claim for costs.
12. Concerns about the conduct and motivations of the Council have also been raised. I am aware the applicant has pursued the matter through the Council's formal complaints procedure although am unclear as to whether this has since been pursued with the Ombudsman. However, any potential matters of maladministration are indeed best addressed through those routes rather than through me.

13. It seems to me that much of the applicant's criticisms relate to the level of customer service received, which they considered to fall below expected levels. Certainly, in respect of the time taken by the Council to raise the validation issue the applicant's criticisms seem well founded. Such delays are likely to erode trust and confidence in the service. However, had the Council been quicker in raising the matter, there is no evidence to indicate that it would have altered the subsequent discussions or negated the need for the appeal.
14. Whilst there were clearly different views and interpretations of the situation, none of the Council's actions amount to unreasonable behaviour as described by the PPG. On the key issue of validation, I have found the Council's stance to have been correct. As such, the Council was entitled to come to the opinion that the application was invalid and so was unable to make a formal decision on the submission.
15. It was the applicant's right to appeal the situation, and indeed the officers acknowledged this was an option open to the applicant. However, that the applicant chose to do so was of their own volition, and in the circumstances of this case, it is not the Council's responsibility to take on those costs.
16. Therefore, for the reasons given, I find that unreasonable behaviour, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and an award of costs is not justified.

Stewart Glassar

INSPECTOR