



Costs Decision

Site visit made on 10 October 2023

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 December 2023

Costs application in relation to Appeal Ref: APP/C1950/X/22/3299554 41 Ayot Green, Ayot St Peter, Welwyn, AL6 9AB

- 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 Giles Pattison for a full award of costs against Welwyn Hatfield Council.
 - The appeal was against the refusal of a certificate of lawful use or development for development and use of the garage/annex as a second home (C3) with overnight accommodation, cooking, shelter and washing for personal use and family members.
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Decision

1. The application for 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 considers it to be unreasonable behaviour that the Case Officer did not write the Officer Report. The Council says that the Case Officer did write the report. In any event, even if a different Officer had written the report, this would not constitute unreasonable behaviour. It is the content of the report that is relevant rather than the author.
4. The applicant claims that the Council did not use established case law in determining the 4-year period. The caselaw referred to in the applicant's supporting statement is *R (Ocado Retail Limited) v Islington LBC*. In that case it was found that the Council had erred in law by proceeding on the basis that an accrued right relating to a breach of planning condition is lost if that right does not continue to be exercised. Drawing a parallel, the applicant in this case says that the Council took into account the Planning Contravention Notice (PCN) which had stated that the annex was not being used as a dwelling but was being used as a garage. Whilst I accept that the PCN was completed outside of the 4-year period, the Council has only referred to the PCN as raising doubts about the other evidence. The applicant's appeal case was not the same as in the Ocado case because no accrued right to use the building as a dwelling had been established. Furthermore, the report makes detailed analysis of the other evidence submitted in relation to the 4-year period. It did not solely rely on the PCN.

5. The applicant also says that the Council failed to reference appeal decisions¹ submitted by him. However, it is not necessary to specifically refer to every single submitted document. Overall, the Officer Report shows a reasonable understanding and analysis of the case.
6. The applicant claims that the case officer did not sufficiently discuss the case during the application period. However, the Council is not bound to do this. The burden of proof is on the applicant.
7. The applicant claims that the Parish Council put pressure on the council to refuse the LDC without providing counter evidence. I have no evidence that any unlawful pressure was put on the Council to refuse the certificate. Anyone is entitled to write to the Council with their representations to an application and the Council must consider the representation. This does not mean that the decision is based solely the representation. The Officer Report only makes brief reference to the Parish Council's submission and it does not appear that the decision was based upon it.
8. I have found in my appeal decision that the Council's decision on the LDC application was well founded, so even if I had found that the applicant were justified in some of his allegations against the Council, the evidence submitted in the LDC application was not sufficient to demonstrate, on the balance of probabilities, that the use was lawful. The appeal would have had to be made anyway.
9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Siobhan Watson

INSPECTOR

¹ APP/Z4310/X/21/3289727 and APP/P4605/X/21/3268431