



Costs Decision

Site visit made on 5 December 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 January 2024

Costs application in relation to Appeal Ref: APP/P0119/X/23/3326813 53 Station Road, Yate, South Gloucestershire BS37 5DF

- 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 Litfield Land Ltd. for a full award of costs against South Gloucestershire Council.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the erection of a rear outbuilding to facilitate a double garage and office/store/hobby room ancillary 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 are normally expected to meet their own expenses. However, the Planning Practice Guidance (PPG) chapter on appeals advises that costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). 'Unreasonable' has its ordinary meaning, as established by the Courts¹. At paragraph 031, the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. The applicant sought a full award of their costs, on procedural and substantive grounds. The application was made in writing in accordance with the PPG at paragraph 035. In summary, the applicant's case is that the application was refused without warning, giving them no opportunity to address the Council's objections to the proposal. The Council did not clearly explain why the evidence supplied in support of the proposal was insufficient and their reasoning behind the refusal of the application was not clearly explained. Furthermore, in refusing the application the Council gave insufficient weight to a similar development at a neighbouring residential property for which an LDC had recently been granted. As a result, the Council could not substantiate its case at appeal.
4. At paragraph 047, the PPG advises that a Council is required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Paragraph 049 of the PPG advises that a Council is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal,

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

including by unreasonably refusing or failing to determine applications or by unreasonably defending appeals.

5. The revised National Planning Policy Framework (the Framework) advises that decisions on proposed development should be approached in a positive and creative way. The Council plainly did not seek to obtain further evidence at the application stage. However, doing so is not always a practicable course of action having regard to the strict timescales normally involved in determining applications. The Officer delegated report makes it clear that one of the reasons for refusing the previous LDC application had not been addressed. In any event, given the significant differences between the main parties, made apparent during the appeal, it is unlikely that submitting further evidence would have resulted in the decision on the application being different.
6. Moreover, Paragraph 006 of the PPG chapter on LDCs², confirms that the applicant bears the responsibility for providing sufficient information to support their application and that where the development is proposed, an applicant needs to describe the proposal with sufficient clarity and precision to enable the Council to understand exactly what is involved. Consequently, in my view there is little to suggest that the Council's approach to dealing with this matter has been deliberately unhelpful or otherwise significantly at odds with the approach advocated in the Framework.
7. On matters relating to the substance of the case, the reasoning behind the decision to refuse the application was fully set out in the Officer delegated report. The report clearly explains, in a detailed, reasoned and objective manner, why the Council considered that the application should be refused. Since there are clear references in the report to the scale of the appeal proposal relative to the use for purposes incidental to the enjoyment of the dwelling, the factors underlying the reason for refusal are readily gleaned from that document. There was little in the report which could be described as inherently vague or inaccurate. In refusing the application, the Council made a judgment based on their interpretation of the facts and circumstances of the proposal assessed against planning law. There was a detailed examination of established case law as it related to the proposal.
8. Additionally, the LDC recently granted for development at a neighbouring residential property was given detailed consideration in the report. Consistency in planning decisions is clearly important, to ensure that public confidence in the planning system is maintained. However, that does not mean that proposals which are outwardly alike will always receive a similar decision. A reasoned explanation was offered as to why the proposal differed on the facts and circumstances from the neighbouring development. Ultimately, in finding that the Council's decision was well-founded I shared their conclusion that the burden on the applicant to show that the proposal is lawful had not been discharged in this instance. For this and the above reasons, the Council has substantiated its case at appeal.
9. Therefore, there is little which clearly shows that the Council have acted in a manner similar to any of the examples of unreasonable behaviour relating to the procedural matters in the appeal in the PPG at paragraph 049, in a manner similar to the examples of unreasonable behaviour relating to the substance of the case in the PPG at paragraph 049, or that they have otherwise acted

² Reference ID: 17c-006-20140306.

unreasonably. Accordingly, the conditions for an award of costs in the PPG at paragraph 030 have not been met.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR