



The Planning Inspectorate

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Mr Dean Butti
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Your Ref:

Our Ref: APP/J1915/X/22/3301570

Date: 23 January 2024

Dear Sir

LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)
TOWN & COUNTRY PLANNING ACT 1990 – SECTIONS 195 & 322
42 BELL LANE, WIDFORD, WARE, SG12 8SH: APPEAL BY MR DEAN BUTTI:
APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Levelling up, Housing and Communities to refer to the Planning Inspector's decision of 7 September 2023 concerning the above appeal. The appeal was against the decision of East Hertfordshire District Council of 1 June 2022 to refuse to grant a lawful development certificate (LDC) for erection of solar panels on land described above.

2. This letter deals with the appellant's late application for an award of costs against the Council¹. The application was made in written correspondence dated 5 October and 5 November 2023. The Council replied on 24 October 2023. As these representations have been fully disclosed to the parties, it is not proposed to summarise them. They have been carefully considered.

Summary of decision

3. The formal decision is set out in paragraphs 15 and 16 below. The costs application succeeds and a full award of costs is being made.

Basis for dealing with the costs application

4. In planning and enforcement appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense.

¹ The Planning Inspectorate's email of 4 October 2023 explained to the parties that, in the relevant circumstances, the Secretary of State had exercised discretion to accept the late application for consideration



5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party, irrespective of procedural method, where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered by reference to the Government's Planning Practice Guidance (PPG) on awards of costs (as published on the Gov.uk website under "Appeals"), the appeal papers, the correspondence on costs and all the relevant circumstances.

Reasons for the decision

7. All the available evidence has been carefully considered. The decisive issue is whether or not the Council acted unreasonably by refusing to grant a LDC for the application, with the result that the appellant was put to unnecessary or wasted expense in appealing. Particular regard has been paid to paragraph 049 of the PPG. This paragraph points out that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. It also warns about the risk of a full award of costs being made against a local planning authority where planning permission is granted on an identical planning application, where the scheme has not been amended and the evidence base is unchanged, and the appeal proves to be abortive as a result.

8. The sequence of events throughout the appeal process have been carefully examined. The LDC application (3/22/0543/CLPO) for erection of solar panels on the property was submitted on 7 April 2022. The application was refused by the Council on 1 June 2022 with the reason for refusal stating:

"The proposed erection of solar panels as shown on drawing refs. SG128SH-1, SG128SH-3, Plan 1 and Plan 2 fails to comply with criteria A.1(c), and conditions A.2(a) and A.2(b) set out in Schedule 2, Part 14, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The development is therefore not considered to be permitted development and planning permission is required."

9. Following the refusal, the appellant wrote to the Council on 5 June 2022 to complain about the decision as he considered that the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) had been misinterpreted. Following a series of email discussions between the parties about whether or not the proposed development did meet the requirements of the GPDO, the Council replied formally on 1 July 2022. The letter confirmed that the proposal *did* comply with criteria A.1(c) of the GPDO since the solar panels were to be installed on the roof of the dwelling rather than the wall. It followed that the condition A.2(a) would have been considered differently. The letter does not address condition A.2(b), however it mentions condition A.2(c) which stipulates that the solar panels are removed as soon as practicable once no longer needed. (The Council's statement of case also refers to A.2(c) instead of A.2(b) so the Secretary of State assumes this discrepancy is caused by a 'typo' in the decision notice.). The letter states that the appellant would have been contacted to confirm the temporary nature of the proposal. The letter apologised for the errors made and offered the appellant an opportunity to resubmit the application free of charge. It indicated it would be expedited, with a decision forthcoming likely before the appeal was determined. The

appellant re-submitted the application on 5 July 2022 and it was granted on 30 August 2022.

10. The Council's statement of case was submitted on 9 August 2022 and also contended the proposal would comply with the GPDO subject to confirmation regarding condition A.2(c). An email from the Council regarding the site visit was received on 3 August 2023 and confirmed they would not be contesting the appeal and that they accepted it should be allowed. The appeal decision was issued on 7 September 2023 and was allowed.

Conclusions

11. The appellant's costs submissions appear to concern the expenses of the whole process including re-submitting the LDC application, and a planning application. For the avoidance of doubt, the application for costs can only relate to unnecessary or wasted expense incurred in relation to the appeal proceedings. The expenses of making a second LDC application and planning application falls outside of the appeal proceedings and are not therefore recoverable. Whilst the Secretary of State acknowledges the delays could have increased the costs of the project, this also falls outside the appeal process. This is explained in paragraphs 032 and 033 of the PPG. Nevertheless, the Secretary of State will consider if the Council have behaved unreasonably causing the appellant to incur wasted expense in making the appeal.

12. The Council clearly admit that the refusal of the first application was wrongfully made. Furthermore, it is evident that the grant of an LDC on the resubmitted application was made on an unchanged evidence base. The Secretary of State notes that in relation to condition A.2(c), the appellant had also confirmed the temporary nature of the installation on the application form and in further correspondence with the Council. The Secretary of State appreciates that the resubmitted application was free of charge, but as explained above the cost of this falls outside the appeal proceedings and is irrelevant to the expense of making the appeal. The Secretary of State acknowledges that the error in refusing the first application was unfortunate and he notes the Council's apologies to the appellant, however, he finds it difficult to avoid the conclusion that this amounted to unreasonable behaviour which resulted in wasted expense to the appellant in making the appeal. Had the initial application been approved, as the Council indicate it should have been from the outset, the appellant would not have had to resort to the expense of making the appeal. Although the Council contend the appellant could have withdrawn the appeal once the LDC had been granted on the resubmitted application, this would not have made any difference to the appeal costs, since they were already fully incurred by this time. Furthermore, the Secretary of State notes the Inspector's conclusions that the Council's refusal of the first application was not well founded and the appeal should succeed.

13. In the particular circumstances the conclusion on the costs application is that the Council acted unreasonably within the scope of paragraph 049 of the costs policy guidance with the result that the appellant incurred wasted expense in connection with the appeal proceedings. A full award of costs is therefore considered justified.

14. For the avoidance of doubt, the Secretary of State's power to award costs is interpreted as enabling him to award to a party the costs necessarily and reasonably incurred in relation to the appeal proceedings before him. He does not determine the amount payable. That will be for the parties to resolve by agreement on the evidence of expense actually incurred and wasted or failing that, in the context of an application to the Senior Courts Costs Office for detailed assessment.

FORMAL DECISION

15. For the reasons given above, the Secretary of State has decided that a full award of costs, on grounds of “unreasonable” behaviour resulting in “wasted” or “unnecessary” expense is justified in the particular circumstances.

COSTS ORDER

16. Accordingly, the Secretary of State for Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 195 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, **HEREBY ORDERS** that East Hertfordshire District Council shall pay to Mr Dean Butti, his costs of the appeal proceedings before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 1 of this letter.

17. You are now invited to submit details of those costs to East Hertfordshire District Council with a view to reaching an agreement on the amount. A copy of this letter has been sent to them.

Yours faithfully

E. R. Humphrey

ELIZABETH HUMPHREY
Authorised by the Secretary of State
to sign in that behalf