



Costs Decisions

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by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1ST AUGUST 2024

Costs application in relation to Appeal Ref: APP/Z5630/X/23/3329058 105 The Crescent, Kingston Upon Thames, New Malden KT3 3LE

- 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).
 - **Application A** is made by the Council of the Royal Borough of Kingston Upon Thames for a full award of costs against Arshad Khawaja (Canterbury Care & Support Ltd).
 - **Application B** is made by Arshad Khawaja (Canterbury Care & Support Ltd) for a full award of costs against the Council of the Royal Borough of Kingston Upon Thames.
 - The appeal was against the refusal of a certificate of lawful use for the use of a C3a dwelling as a children's home for a single child, with two carers sleeping overnight, working on a rota basis (C2).
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Decisions

Application A

1. The application for an award of costs is refused.

Application B

2. The application for an award of costs is refused.

Reasons

3. 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.

Application A

4. The applicant in application A (from hereafter referred to as the Council) has sought a substantive and procedural award of costs in respect of the accompanying appeal.
5. The PPG outlines that an appellant is at risk of a substantive award of costs being made against them if the appeal or ground of appeal has no reasonable prospect of succeeding. In respect of the substance of the appeal, the Council claims that the Council's Officer Report and Statement of Case set out that the appeal had no reasonable prospect of succeeding. It is indicated that this is further compounded by the fact that the appellant applied for planning permission for the change of use.
6. Firstly, the appellant's reason for applying for planning permission was due to the time an appeal decision might take to be determined, rather than agreeing with the Council's decision. Furthermore, as the accompanying appeal succeeded, the appellant has not acted unreasonably in this instance.

7. Procedurally, the Council has outlined concerns over the appellant's submissions of corrected plans and appeal decisions at a late stage in the appeal process. The Council have outlined that the appellants introduced fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen. They also claim the appellant prolonged the proceedings by introducing a new ground of appeal or issue.
8. It is accepted that the corrected plans and the highlighted appeal decisions were not submitted as part of the LDC application and would be regarded as being new or fresh evidence in the appeal. However, for the reasons set out in the accompanying appeal decision, I do not consider the appeal decisions or corrected plans as substantial new evidence, which added anything new to the appellant's case. The Council has also not set out how the fresh evidence resulted in extra expense for preparatory work or how they introduced a new ground of appeal or issue.

Conclusion on Application A

9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and a procedural or substantive award of costs is not warranted.

Application B

10. The applicants seek a full award of costs in respect of the appeal against the refusal of the LDC by the Council of Royal Borough of Kingston Upon Thames.
11. The applicants claim that the decision of the Council to apply for costs has left them with no option but to also seek an award of costs against the Council. The applicant claims the refusal of the LDC required them to submit a full planning application to carry out the use.
12. I have had regard to the applicant's case, and I understand their frustrations. However, all parties have the option of applying for costs. The costs application by the Council was submitted in a timely manner and their reasons for applying were set out in line with the PPG guidance. As such, I do not consider the Council's application for costs as something that could be regarded as unreasonable behaviour as part of the appeal process. Further to this, as the applicant was able to appeal the decision or resubmit the LDC application with more information, applying for planning permission was not the only option or a requirement set out by the Council. Even though, in my judgment, the Council were incorrect in their approach to determining the LDC application, their behaviour falls short of being unreasonable.

Conclusion on Application B

13. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M. P. Howell

INSPECTOR