



Costs Decision

Site visit made on 30 July 2024

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024.

Costs application in relation to Appeal Ref: APP/T0355/X/23/3318214 The Cottage, The Straight Mile, Shurlock Row, Reading RG10 0QN

- 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 McArdle for a full award of costs against the Council of the Royal Borough of Windsor and Maidenhead.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development (LDC) for a proposed detached outbuilding.

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 states that *'the first correspondence from the Council (after the appellants agents sending chasing emails) was on 10th February 2023 (17 days after the determination deadline) wherein the last correspondence on 2nd March 2023 the Council stated a decision would be issued by Tuesday 7th March 2023 (copy email trail attached). Despite this, no decision was issued and the appellant has allowed a further day to elapse, still without any decision being issued and therefore there is clearly no option left to the appellant other than having to refer to appeal for determination.'*
4. The PPG states that if *'it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.'*¹

¹ Paragraph: 048 Reference ID: 16-048-20140306

5. The Council's Statement of Case included a full explanation of why it would have refused the LDC application. It also included a copy of an email trail of correspondence between the appellant's agent and the Council. Within that correspondence the Council apologise for the delay in determining the LDC application and it is stated that planning officers have a high volume of work. Whilst I acknowledge the Council's explanation that it gave to them when asked, the agent should not have had to chase the Council for an explanation and decision. Having regard to the advice of the PPG, the Council's failure to provide an explanation and determine the application in a timely manner, amounts to unreasonable behaviour.
6. However, in an application for a certificate of lawful use or development, the onus of proof is squarely on the applicant. Class E, Part 1 of Schedule 2 of the GPDO² confirms that outbuildings required for purposes incidental to the enjoyment of the dwellinghouse as such, are permitted development, subject to various conditions and limitations. As stated in my substantive decision, there is no dispute between the parties that the development falls to be considered under Class E and that the proposal would meet paragraphs E.1, E.2 and E.3 of Class E. What is at issue is whether the proposal would be for a purpose incidental to the enjoyment of the dwellinghouse as such, and whether the development would be reasonably required for that use.
7. The Council had highlighted in its email to the agent on the 24 February 2023 that *'given it is not clear as to the extent of the residential curtilage, and taking into account the overall size of the building and its uses within, it is not considered that it has been demonstrated that the building would be incidental.'* In reply to that email, a statutory declaration was provided by the agent regarding the extent of the curtilage, reference was made to a recently permitted LDC application by the Council for a similar building and the suggestion was made that if a site visit was undertaken that the extent of the curtilage would be obvious.
8. It appears that an unaccompanied site visit was undertaken, an Officer Report produced, and a decision notice issued. However, the decision was issued after the appeal had been lodged. It is clear from that Officer Report and the decision notice, that had the Council made a decision on the application prior to the appeal being submitted, it would have refused to grant a certificate for the reason set out in that Officer Report.
9. It is not apparent from that Officer Report or the Council's evidence why the other case cited by the agent was permitted if it is comparable to this case. I acknowledge that the plans appear to relate to a similar outbuilding to that before me. However, there is little evidence before me to indicate the size of the dwelling it would have been associated with, its location within and the size of that dwelling's curtilage/garden areas. Whether a proposed development would be incidental to the enjoyment of the dwellinghouse is a matter of planning judgement. Therefore, it is unclear as to whether the Council's behaviour was unreasonable in this regard.
10. Whilst the applicant may not agree with the Council's interpretation of the evidence, the onus in an application for an LDC is upon the applicant. As set out in my substantive appeal decision, I do not agree with the Council's position and have concluded that the deemed refusal was not well-founded. A

² Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

detailed justification in respect of the size of the outbuilding's spaces, their allotted use and information in relation to the use of the existing outbuildings was submitted within the applicant's appeal statement. Yet, there is little to indicate that this evidence was part of the LDC application considered by the Council. Furthermore, as stated previously whether the proposed development would be incidental to the enjoyment of the dwellinghouse is a matter of planning judgement. Consequently, I do not consider that the Council's actions were unreasonable in this regard.

11. Overall, even though I have found the Council's behaviour in failing to determine the application in a timely manner is unreasonable, the appeal would still have been necessary to address whether the proposed development would be incidental to the enjoyment of the dwellinghouse. As such, there cannot be any unnecessary or wasted expense incurred by the applicant. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D Boffin

INSPECTOR