

Costs Decisions

Site inspection on 10 September 2023

by John Whalley

Inspector appointed by the Secretary of State

Decision date: 3rd October 2024

**Costs application by Mrs Kate Kipps – Application A – Planning application
Appeal ref: APP/K3415/W/24/3341056 – s.78 appeal
29 Alrewas Road, Kings Bromley, Burton-on-Trent DE13 7HW**

- The application was made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
 - The application was made by Mrs Kate Kipps for an award of costs against Lichfield District Council.
 - The appeal was made by Mrs Kate Kipps against the refusal of the Council to grant planning permission for the erection of a single storey granny annexe for use ancillary to the main dwelling.
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Decision

1. The application for an award of costs is not allowed.

Submissions made by Mrs Kate Kipps

2. A full application for an award of costs was made. It followed the failure of the Council to work in a positive, proactive and reasonable manner. The Council had acted unreasonably throughout their consideration of the application. It led to the appeal. The Council had advised that the application was acceptable. It was being recommended for approval at the 30 October 2023 planning committee meeting. The Council had not provided reasons as to why it was pulled from the planning committee on 27 October. They had delayed seeking legal advice until 21 November, 6 months after the application had been validated.
3. The Council went against the professional advice of the Conservation Officer. There was no reason for refusal based upon effect on the Conservation Area. There had been no opportunity to respond to any concerns the Council might have had following any legal advice. The Applicant had wasted expense in the appeal. Time had been spent on the appeal, including: reviewing the Case Officer's report, the decision notice, emails and correspondence with the Council, completing the appeal statement of case, submitting the planning appeal to the Inspectorate, reviewing Council statements in the appeal process and responding when necessary.

Response - Lichfield District Council.

4. The Council has acted reasonably on the appeal procedure timescale. They had provided the Inspector with all material relevant to reaching a decision.
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Inspector's conclusions

5. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process. Parties in a planning appeal normally meet their own expenses. Costs do not, as a rule, follow the result. However, where a party has – (1) behaved unreasonably and – (2) this has directly caused another party to incur unnecessary or wasted expense, they may be subject to an award of costs. However, the power to award costs is limited to those necessarily and reasonably incurred in the appeal process. Expense incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs in any event.
6. Costs unrelated to the appeal or other proceedings are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission - *Para: 032 PPG*.
7. Unreasonable behaviour during the planning application process can be taken into account. But that might only have applied here had the Council's case, as set out in their statement following their refusal of planning permission for the single storey granny annexe, been irrelevant or woeful. As it was their views were pertinent and suitably considered. They did not come to the view they should have granted planning permission. Had they decided that, in fact, they would, or should have granted planning permission, but failed to do so, they would have been open to a complaint that they had acted unreasonably. That was not the situation here.
8. My decision to refuse to issue a planning permission for Mrs Kipps' new dwelling project was based upon a consideration of all the matters and representations put before me.
9. In this instance I found in favour of the Council's objections to the grant of planning permission. The application for costs needed to clearly demonstrate how any alleged unreasonable behaviour resulted in unnecessary or wasted expense dealing with the appeal. That was not done.

COSTS ORDER – Application A – S.78 Planning appeal

10. No order as to costs is made.

Costs application by Mrs Kate Kipps - Application B – Lawful Development Certificate Application

Appeal ref: APP/K3415/X/24/3341064 – s.195(1)(a) appeal

29 Alrewas Road, Kings Bromley, Burton-on-Trent DE13 7HW

- The application was made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
 - The application was made by Mrs Kate Kipps for an award of costs against Lichfield District Council.
 - The appeal was made by Mrs Kate Kipps against the refusal of the Council to issue a Lawful Development Certificate for Use of the land for siting of a mobile home for use ancillary to the main dwelling.
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Decision

11. The application for an award of costs is not allowed.

Submissions made by Mrs Kate Kipps

12. A full application for an award of costs was made. The Council had not worked in a positive, proactive and reasonable manner.
13. The application was submitted on 9 August 2023 and validated 10 August 2023. It had been resubmitted following incorrect Council advice. Thereafter, Council delayed issuing a decision until 25 January 2024.
14. The Appellant's facts, evidence and legal submission said the mobile home could be moved away from the site in one piece. However, the Council failed to give proper consideration to the application and evidence. They simply stated it would not be possible for the unit to be lifted in one whole unit and moved within the residential boundary. The Council did not substantiate their statement that laying of services would be seen an act of development and permanence. Nor did they give proper consideration to case law provided.
15. The Appellant and her consultant had spent time on the planning appeal including: reviewing the Case Officer's report; the decision notice; emails and correspondence with the Council; the appeal statement; the appeal to the Inspectorate and statements from the Council throughout the appeal process and responding when necessary.

Submissions made by Lichfield District Council.

16. The Council has acted reasonably with regard to the timescale imposed by the appeal procedure and provided the Inspector with all material relevant to reaching a decision. There was no basis for an award of costs.

Inspector's conclusions

17. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process. Parties in a planning appeal normally meet their own expenses. Costs do not, as a rule, follow the result. However, where a party has – (1) behaved unreasonably and – (2) this has directly caused another party to

incur unnecessary or wasted expense, they may be subject to an award of costs. However, the power to award costs is limited to those necessarily and reasonably incurred in the appeal process. The Appellant had said: *"In summary, the delays, confusion, and lack of clear communication from the LPA throughout the application process have caused significant stress and unnecessary costs for the appellant."* But expense incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs in any event. Costs unrelated to the appeal or other proceedings are ineligible.

18. Costs application decisions do not go with the appeal decision. But unreasonable behaviour here during the lawful development certificate application process can be taken into account. But, as for Mrs Kipps application for an award of costs in relation to her s.78 appeal, that might only have applied if the Council's case been irrelevant or woefully inadequate. In my view, the Council correctly addressed the application. They gave pertinent reasons to decline to provide a certificate of lawfulness.
19. The application for costs needed to clearly demonstrate how any alleged unreasonable behaviour resulted in unnecessary or wasted expense in the appeal process. In my view, that was not done. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against the Council is not justified.

COSTS ORDER – Application B – s.192(1)(b)

20. No order as to costs is made.

John Whalley

INSPECTOR