



Costs Decision

Site visits made on 9 May 2024 and 4 June 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 03 October 2024

Costs application in relation to Appeal Ref: APP/N0410/X/23/3336140 Stoke Grange, Fir Tree Avenue, Stoke Poges, Buckinghamshire, SL2 4NN

- 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 Abid Hussain for a full award of costs against Buckinghamshire Council.
- The appeal was against the refusal of a certificate of lawful use or development for the 'proposed construction of outbuilding to be used incidental to the main dwelling house'.

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. Awards against a party may be either procedural or substantive.
3. The PPG advises that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. Examples of unreasonable behaviour include prolonging the proceedings by introducing a new reason for refusal. The PPG also advises local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by preventing or delaying development which should clearly be permitted.
4. The main point of the claimant's case is that the respondent was unreasonable for adding a new ground for refusing to grant an LDC which did not form part of the original reason for refusal and thus preventing or delaying development which should clearly have been permitted, having regard to its accordance with the provisions of Article 3(1) and Class E of Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) ("the GPDO"). The claim is therefore procedural and substantive.
5. The Council refused the application to grant a certificate of lawful use or development (the LDC) on the basis that the scale of the building was not considered to be incidental to the use and enjoyment of the main dwelling. In its statement of case, the Council raised the matter that the proposed outbuilding would, at the date of the LDC application, be sited on land outside of the curtilage of the main dwellinghouse.

6. In doing so, the Council's approach followed an appeal decision¹ which was issued after the Council's decision on the LDC application. Councils are expected to review their cases promptly following the lodging of an appeal as part of sensible on-going case management.
7. The Inspector's decision (dated 26 October 2023) post-dated the respondent's reason for refusal of the LDC application (23 October 2023) and to my mind, I consider that the respondent could not have pre-empted the outcome of that appeal. The appeal decision is relevant to my consideration of the LDC appeal and as such, I do not find it unreasonable for the respondent to have raised this matter in its statement of case.
8. Indeed, as can be seen from my decision letter, I have found the land was not within the curtilage of the dwellinghouse at the date of the LDC application. I have also found that the property did not benefit from permitted development rights at the date the LDC application was submitted. It follows that the Council has not prevented or delayed development which should clearly be permitted and so the appeal would still have been necessary.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated.

E Brownless

INSPECTOR

¹ Appeal Decision: APP/N0410/C/22/3298939