



Costs Decision

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

**Costs application in relation to Appeal Ref: APP/R5510/X/23/3317871
128 Pine Gardens, Ruislip HA4 9TH**

- 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 and Mrs Beck for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeal was against the refusal of a certificate of lawful use or development for hip to gable conversion, box dormer to rear and provision of two roof lights on front roof slope.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals are normally expected to meet their own expenses. However, the Planning Practice Guidance (PPG) chapter on appeals advises that costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeals process (paragraphs 028 and 030). At paragraph 031, the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. The applicants sought an award of their costs on substantive grounds. The application was made in writing, in accordance with the PPG at paragraph 035. Summarised, the applicants' case is that the Council refused the application notwithstanding the established case law and copies of relevant appeal decisions drawn to its attention, all of which clearly indicated that an LDC should be issued for the proposal. As a result, the applicants have been put to the unnecessary expense of making an appeal.
4. The Council's response to the application is in summary that the appeal decision supplied with the written statement of case was the most relevant in informing its decision-making. The circumstances in that appeal closely resembled those in the proposal, the case was more recent than those referenced by the applicants, also post-dating publication of the Government's Technical Guidance (TG) which sets out how curtilage should be understood. This in the Council's view all went to showing that the decision to refuse the application was well-founded.
5. At paragraph 049, the PPG provides a non-exhaustive list of examples of unreasonable behaviour relating to the substance of the matter at appeal. This list includes failing to produce evidence to substantiate reasons for refusal on appeal, making vague, generalised or inaccurate assertions about a proposal's

- impact which are unsupported by any objective analysis and acting contrary to or not following well-established case law.
6. Copies of several relevant appeal decisions, which included references to established case law, were supplied by the applicants to support the application prior to its determination. Although each case ultimately falls to be considered on its individual circumstances, such evidence should properly have been taken into account by the Council prior to the application being determined. It is unclear however whether this in fact occurred. There is no mention of this evidence in the officer delegated report. There is nothing to suggest that there was a reasoned, detailed analysis of the appeal decisions and the established case law referenced therein, explaining the relevance or otherwise in relation to the proposal, which contributed to the Council's decision-making process.
 7. Furthermore, from its statement the Council does not seem to have appreciated that copies of most of the appeal decisions referenced by the applicants had already been supplied at the application stage. The uncertainty over whether the Council took into account the totality of the applicant's evidence before determining the application is compounded in the Council's costs response, which refers to the applicants previously supplying two appeal decisions when the actual number was far greater. These factors contribute to a real sense of doubt over whether the Council have given proper consideration to all of the evidence supplied by the applicants.
 8. Neither does the officer delegated report refer to the appeal decision that the Council largely relied on in support of its case at appeal. Only in the Council's written statement of case is this decision introduced. Although concerning a similar proposal and dating from relatively recently, those factors in themselves do not mean that this decision should inevitably be afforded more weight than other evidence. It is unclear whether the Inspector in the appeal in question had the luxury, as in the case before me and those appeal decisions supplied by the applicants, of considering detailed evidence which included references to established case law. Accordingly, I am by no means convinced that great reliance should have been placed on that decision. The wealth of other evidence available, in which a different approach to the matter at issue has been taken on a generally consistent basis, reinforces my misgivings in this regard.
 9. Moreover, the Council did not draw my attention to a significant change in legislation nor to any recent case law that might have warranted adopting a different approach to the matter at issue than that clearly set out in the evidence supplied by the applicants. Advice in the TG expands on but does not alter how the term 'curtilage' is to be understood and interpreted in a planning context. These and the above observations all lead me to find that the Council's reason for refusing the application is fundamentally weak, being largely unsupported by objective evidence capable of withstanding detailed scrutiny and failing to recognise the principles set out in well-established case law.
 10. Therefore, in my view the Council has been unable to substantiate the reason for refusing the application at appeal, its actions in this respect being similar to some of the examples of unreasonable behaviour set out in the PPG relating to the substance of the case, referred to above. The applicants have clearly been put to the unnecessary additional expense of making an appeal as a result. It

follows that the conditions for an award of costs in the PPG at paragraph 030 have been met.

Conclusion

11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Hillingdon shall pay to Mr and Mrs Beck the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicants are now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stephen Hawkins

INSPECTOR