



Costs Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2024

**Costs application in relation to Appeal Ref: APP/T3725/X/23/3321522
Liberty House, Stoneleigh Road, Blackdown, Leamington Spa,
Warwickshire, CV32 6QR**

- 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 Ms Joanne Baylis for a full award of costs against Warwick District Council.
 - 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 for an attic conversion, two storey extensions, single storey extensions, a four car garage block, a gym/swimming pool/plant room, and to convert existing garage into habitable space as shown on drawing no x, received on x, with the materials used in any exterior work to be of similar appearance to those used in the construction of the exterior of the dwellinghouse.
-

Decision

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

Procedural Matters

2. The Claimant's submissions refer to a section 78 appeal. For clarification, as indicated above, this is an appeal made under sections 195, 322 and Schedule 6 of the 1990 Act and section 250(5) of the Local Government Act 1972 for an award of costs against the failure of the Council to issue a decision notice for a certificate of lawful use or development (LDC).

The submissions for the Claimant

3. In essence, the claimant submits that the Council acted unreasonably and in error in not validating the application and not granting the LDC which resulted in the need for an appeal to be made.

The response by the Council

4. The Council with reference to the Development Management Procedure Order 2015 states that the request for additional information in order to determine the LDC application was reasonable and necessary and in line with the relevant procedures in determining LDC applications. The Council did not receive the information as requested. Thus, invalidating the application was reasonable.

Reasons

5. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

6. The claimant maintains that it was unreasonable for the Council to request full elevation drawings and floor plans and should have validated the application and issued a certificate of lawful use or development (LDC) based on the claimant's evidence that the proposals amounted to permitted development (PD) under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). It is contended that procedurally the Council acted unreasonably.
7. The PPG states that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of cost. As detailed in my decision, I considered the application met the test of validity by virtue of Section 39 (12) of Part 8 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMP).
8. I acknowledge that the provision of elevation drawings and floor plans is not necessary for a LDC application to be valid. However, in this particular case, which involved a number of proposals, as detailed in my decision, the appellant's written submissions were not sufficiently precise and unambiguous to enable an accurate assessment of the proposals. Section 39 (9) of the DMP states that "The local planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable them to deal with the application". In March 2023, the Council wrote to the claimant requesting elevation and floor plan drawings together with confirmation of the proposed use of the proposed converted garage. In my view, having regard to section 39 (9) of the DMP, it was not unreasonable for the Council to request this additional information to enable them to deal with the application.
9. I accept that procedurally, withdrawing the application was not the most appropriate course of action. However, in my view, the outcome of withdrawing an application is tantamount to a non-determination and/or a refusal against which an appeal can be made. Indeed, the claimant notified the Council in April 2023 that an appeal against non-determination would be made if the Council did not validate the application.
10. As detailed in my decision I have found that the claimant's evidence submitted with the application was insufficiently precise and unambiguous to demonstrate, on the balance of probabilities, whether the LDC proposals would be permitted development. I have no reason to doubt that the Council considered the claimant's submissions and made its decision based on all the submitted evidence. Also, the Council provided sufficient reason where it considered the claimant's evidence insufficient, to substantiate its reason for withdrawing the LDC application.
11. Whilst the PPG indicates that all parties are expected to behave reasonably "throughout the planning process," and not just during the appeal process, withdrawing the application rather than issuing a non-determination or refusal does not amount to unreasonable behaviour, even if that course of action turns out to be flawed. The claimant chose to make a LDC application and has been professionally advised and represented throughout the subsequent appeal process. The application relied upon whether the proposals would amount to permitted development under the GPDO and so did the appeal. The Council addressed the case put by the claimant, as did I.

12. I am unable to conclude that the Council behaved unreasonably. In any event, given my decision on the merits of the appeal, the Council's behaviour did not cause the claimant to incur unnecessary or wasted expense in the appeal process. The costs incurred by the claimant in pursuing the appeal were the normal costs arising when the right of appeal is exercised.

Conclusion

13. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Elizabeth Jones

INSPECTOR