
Costs Decisions

Site visit made on 28 October 2024

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2025

Costs application A in relation to Appeal Ref: APP/T9501/W/24/3339238 Gardeners Cottage, Harbottle, Morpeth, Northumberland NE65 7DG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Roger Harrison and Ms Peta Warrington for a full award of costs against Northumberland National Park Authority.
 - The appeal was against the failure of the Authority to issue a notice of their decision within the prescribed period on an application for a development described as: Construction of a garden room at Gardeners Cottage, Harbottle, Morpeth, Northumberland, NE65 7DG without complying with a condition attached to Planning Permission Reference: 19NP0023, dated 17 April 2019.
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Costs application B in relation to Appeal Ref: APP/T9501/W/24/3339238 Gardeners Cottage, Harbottle, Morpeth, Northumberland NE65 7DG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Northumberland National Park Authority for a full award of costs against Mr Roger Harrison and Ms Peta Warrington.
 - The appeal was against the failure of the Authority to issue a notice of their decision within the prescribed period on an application for a development described as: Construction of a garden room at Gardeners Cottage, Harbottle, Morpeth, Northumberland, NE65 7DG without complying with a condition attached to Planning Permission Reference: 19NP0023, dated 17 April 2019.
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Decisions

Application A

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

Application B

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

Reasons

3. 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.
4. It is slightly unusual for each of the main parties to make an application for an award of costs against the other. I have considered each costs application on its merits. However, because the matters are interrelated and to avoid repetition, I have dealt with the two costs applications together, except where stated otherwise.

5. Ordinarily, the costs regime in planning appeals only covers costs that have been incurred during the process by which the Inspector's decision is reached¹. In this particular case, much of what has been put to me in respect of the behaviours of the parties relates to actions prior to the Council's decision not to validate the application rather than to the procedural aspects of the appeal process, or the substantive planning merits of the appeal.
6. The PPG does advise that whilst costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded².
7. In the context of an application for an award of costs in respect of a planning appeal "unreasonable" is used in its ordinary meaning and not in the stricter public law definition of "Wednesbury"³ unreasonable.

The case for the appellant

8. The appellants' application for costs is on six grounds:
 - The authority did not meaningfully engage with the appellants from the beginning of the process until making the appeal;
 - That the refusal to validate the application was wrong in law;
 - That the failure to determine the application lacked any basis in law and that the authority failed to give the appellants a full, proper and lawful explanation to justify such a decision;
 - That the authority has no powers to decide that an application which meets the statutory form for that type of application should be made under a different mechanism;
 - That the authority did not provide advice in respect of what type of application should be made; and
 - That the authority has withheld refunding the planning application fee.
9. On the first ground I have been provided with extensive correspondence between the appellants and the Authority. From my reading of this, it does not appear to be a comprehensive collection of all of the correspondence. For example, some of the email strings are incomplete. Additionally, whilst I have seen the Authority's responses to two pre-application inquiries relating to the removal of the disputed condition that predate the submission of the appeal, I have not been provided with all of the information that was put to the Authority that resulted in these responses.
10. From the correspondence that I have seen, it is clear that the Authority did attempt to assist the appellants with their proposal. It is also apparent that the Authority sought clarity with regard to what the appellants actually wanted to do but did not receive a definitive answer. Within this context, I cannot conclude that there was a lack of meaningful engagement by the Authority or that it behaved in an unreasonable manner.

¹ Planning Practice Guidance – Appeals - Paragraph: 027 Reference ID: 16-027-20140306

² *Ibid* - Paragraph: 033 Reference ID: 16-033-20140306

³ See *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223

11. The second and third grounds effectively amount to the same thing. The Authority did not determine the application because it did not validate and register it. As set out in the main decision, the Authority had before it an application that, in purely administrative terms, met the requirements for a valid application set out in the Town and Country Planning Act 1990 (the Act) and the Town and Country Planning (Development Management Procedure)(England) Order 2015 which ought to have been registered and determined.
12. This was unreasonable. That said, the planning legislation and guidance itself is not clear what steps should be taken when an application is received that is not the correct type of application. Whilst the Authority appear to have taken a pragmatic approach in not validating the planning application, it nonetheless erred because the determination of whether or not the proposal fell to be decided within the context of Section 73 of the Act is part of consideration of the merits of the application, and not whether or not it is validly made. I would note at this point that even if the Authority had validated and registered the application, I consider that it is extremely likely that it would have come to the same conclusion that I have, namely that it could not grant planning permission because what was sought by the application falls outside what can properly be considered in an application under Section 73 of the Act. Thus, the appeal would not necessarily have been avoided.
13. The fourth ground is not strictly correct. In its role as local planning authority, the Authority is perfectly entitled to conclude that it cannot grant planning permission for something that falls outside the scope of the relevant legislation and within the scope of a different part of the legislation where that part has different requirements.
14. On the fifth ground, the Authority did advise the appellant that an independent use of the Garden Room would require a new application for planning permission for that use. It does not appear to have raised the matter of an application for a certificate of lawfulness under either Section 191 or 192 of the Act. However, I cannot find in the evidence that I have been provided with any indication that the matter of using the garden room in conjunction with the main house for short term letting or other tourist accommodation use was raised with the Authority prior to the planning application being submitted. On this basis, I do not find that the Authority acted unreasonably.
15. The last point is not something that falls within my remit as part of the planning appeal and relates to administrative procedures within the Authority.

The case for the Authority

16. The Authority's application for costs is based on the following grounds:
 - That throughout the process the appellants have refused to state clearly and concisely what they are proposing, and have deliberately been imprecise, vague, and deliberately obstructive about their intentions;
 - That the appellant changed their argument regarding the application at the appeal stage to request an unconditional permission; and
 - That the appellant persisted in making an application under Section 73 of the Act despite being advised that this was not the correct approach to take.
17. Whilst I would agree with the Authority that the manner in which the appellants have presented both the original application and the evidence in the appeal is difficult to follow and in places directly contradictory, I am mindful that the appellants were not

professionally represented in either the planning application or the appeal. Although there are references to having sought professional advice, I have not been provided with this advice or what it said.

18. That said, there is no evidence before me which would indicate that the appellants deliberately sought to obscure the intention or purpose of the application. However, it is also clear from the correspondence that I have seen wherein the Authority enquired about the intended use of the garden room, that a direct or concise response wasn't particularly forthcoming. This would not have assisted the Authority in advising the appellant. Whilst the information was presented in a slightly confusing manner, this was unhelpful rather than unreasonable.
19. I have dealt with the second ground in the main decision and found that whilst the approach taken in the appeal submissions was slightly different from that of the application, it did not in substance change the proposal from the application.
20. On the third ground, I find that the appellants have acted unreasonably. The evidence indicates that the advice given by the Authority was that a Section 73 application was not the correct approach to take to achieve their objective. Although the appellants argue in their costs response that the application was not made to have clarity about what they can and cannot use the garden room for, this flatly contradicts what the appellants say in their main Statement of Case⁴. Irrespective of how strongly they believed in their position, insisting on proceeding against this advice effectively invited the Authority to reject the application and led directly to the appeal before me.

Conclusion

21. On the evidence before me, both parties have behaved in a manner which could be considered unreasonable. Although the Authority may have been incorrect in its approach to validating the application, the appellants are not without fault either. From the evidence and the correspondence that I have seen, the Authority maintained from the outset that an application under Section 73 of the Act was not an appropriate way to proceed and told the appellants this. Nonetheless, the appellants proceeded to make such an application against the advice of the Authority. Both the original planning application and the submissions in the appeal sought to fashion a Section 73 application into a *de facto* determination of lawfulness.
22. On this basis, I could conclude that each party should be liable to pay the other's costs. However, given what I have read with regard to circumstances leading up to the appeal, I am very strongly of the opinion that this would merely lead to yet further disagreement on what the extent of these costs should be. That would be in neither party's interests.
23. Consequently, I therefore find that each party should bear their own costs in respect of the appeal and both applications for costs should be refused.

John Dowsett

INSPECTOR

⁴ Appellants' Statement of Case Page 4, second paragraph