



Costs Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2025

**Costs Application in relation to Appeal Ref: APP/A1530/X/24/3340977
33 Artillery Street, Essex, Colchester CO1 2JJ**

- 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 Colchester Borough Council for a full award of costs against Mr Randal Goldsmith.
 - The appeal was against the refusal of a certificate of lawful use or development for use of the whole property as 2 x self-contained studio flats.
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Decision

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

The submissions for the Applicant

2. The thrust of the Council's application is that sufficient evidence pertaining to lawfulness was only provided at the appeal stage, when it had been available to the appellant prior to the submission of the appeal.
3. The PPG on certificates advises that where a certificate is refused it does not preclude another application being submitted later on, if more information can be produced. In light of this, the appropriate course of action would have been to submit a new application including the additional evidence now provided, but not originally submitted.
4. The appellant did submit a new application with the additional evidence, but no fee had been paid. The Council requested the fee and in response the appellant's planning agent stated amongst other things that '*...I will suggest to the applicant to appeal the decision so as not to give away money to the council for a service bordering on poor quality.*' The appellant was copied into this response.
5. From the information available it can only be concluded that the reason the refusal decision has been appealed is to avoid paying the necessary fee for a new application. As is demonstrated by the Council's position at appeal, had the appellant paid the fee required by statutory legislation so as to make that application valid, the application could have been considered by the Council and the requested certificate issued.
6. In submitting what is, for all intents and purposes, a new application, but within the context of an appeal, the appellant is unreasonably seeking to circumvent the planning application process. It is clear that the intended purpose of the appeal system is not to provide applicants with a means to circumvent the application process or avoid the payment of planning

application fees required under statutory legislation, which are necessary to ensure a properly funded and resourced planning system.

7. The PPG on appeals confirms at paragraph 30 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.
8. In light of the circumstances outlined, the Council is of the view that the appeal has been unreasonably pursued by the appellant and that the behaviour outlined is unreasonable on procedural grounds. This unreasonable behaviour has resulted in unnecessary expenses to the council incurred in the processing of the appeal, consideration of the new information submitted, presentation of the Council's case, and this application.
9. Had the applicant correctly submitted a new application for a certificate, some of the work required by the council would not have been necessary, nor would the associated expense have been incurred. Where work undertaken for the appeal would still have been required should a further application have been submitted, such as reviewing the evidence submitted, this would, however, have been funded by the application fee rather than representing a direct expense to the Council.
10. In light of the above, the Council exercises its right to apply for a full award of costs.

The response for the Appellant

11. The appeal application was submitted with a graph demonstrating the 4 consecutive years, so it was properly submitted with all documents proving the 4 years of use.
12. The decision notice was issued with very few lines of information and without the delegated report.
13. The files submitted in the appeal only serve as additional evidence for the Inspector.
14. It was already evident with all the documents submitted previously that the property was used as 2 flats for more than 4 years, and if the Council had any doubts, considering the abundant evidence submitted already in the first application, it would have been the minimum to ask for confirmation as all Councils do. A simple email from the Council in the first application would have been enough to clarify all this, but a chain of jobs has been triggered that takes time and resources that could be avoided.
15. This is not a way to evade the payment of the planning fee, on the contrary the appeal is a right and the fact that it will be approved certifies that the decision was not evaluated correctly. Until a few months ago (6 December 2023) it was possible to resubmit the application without having to pay the planning fee again. Previously this was an applicant's right and a possibility that greatly helped applicants and businesses. Considering that this possibility has now been eliminated, it is our right to be able to at least take advantage of the appeal given rejecting this application was not correct as it was used for more than 4 years continuously as two separate flats.

16. Communication was then lacking from the Council throughout this application process.
17. In conclusion, considering that the appeal is accepted, we consider it to be further proof of the decision of an unjust refusal and therefore we believe that no additional payment is due.

Inspector Reasons

18. The Planning Practice Guidance 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.
19. The Council refused the appeal application because it considered sufficient evidence had not been provided to demonstrate on the balance of probabilities that Flat B had been used for a relevant period. The decision notice provided an adequate overview of the reason, and the delegated report would have been publicly available.
20. Contrary to the appellant's assertions that there was abundant evidence and the refusal was unjust, I can only reasonably conclude that the appellant actually did not disagree with the Council's assessment, given additional evidence for the purposes of this appeal was provided. That evidence then dovetailed to ensure the appellant's case was sufficiently precise and unambiguous and resulted in the grant of the requested certificate.
21. That evidence would however have been available to the appellant when the appeal application was originally made. That evidence is not only for me, as the Inspector, but also for the Council and other interested parties to comment upon.
22. The onus of proof is firmly on the appellant to demonstrate their case on the balance of probabilities. It is therefore not beholden on the Council to identify gaps in the evidence and raise this prior to determination.
23. The parties agree that a new application requires the payment of a new fee. The appellant chose not to pay a new fee, as he was entitled to do. Instead, he chose to exercise his right of appeal, as he was entitled to do, and which the Inspectorate was then obliged to accept.
24. However, in doing so with additional evidence the appellant leaves himself vulnerable to an award of costs as it was unreasonable to submit additional evidence that was plainly already held to deal with a clear gap in the evidence. This was particularly necessary as the statutory declaration was very brief, which accordingly needed corroborating, and a graph was not sworn evidence.
25. The rather egregious response to the Council's request for the statutory fee, which the appellant was aware of and then proceeded to pursue, only serves to highlight the unreasonable approach taken in respect of the appeal as opposed making a new application, or simply submitting all the available evidence from the outset.
26. A full award of costs is therefore justified as the Council has incurred unnecessary and wasted expense in its handling and consideration of the appeal and additional evidence which was otherwise unfunded.

Conclusion

27. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

Costs Order

28. 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 Mr Randal Goldsmith shall pay to Colchester Borough Council 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.
29. The applicant is now invited to submit to Mr Randal Goldsmith to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul T Hocking

INSPECTOR