
Costs Decision

Site visit made on 25 March 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Costs application relating to Appeal Ref: APP/M1005/X/23/3334222 The Gables, 94 Church Road, Quarndon, Derby DE22 5JA

- The application is made by George Tyler under the Town and Country Planning Act 1990, sections 195 and 322 and Schedule 6, and the Local Government Act 1972, section 250(5), for a full award of costs against Amber Valley Borough Council.
 - The appeal was against the refusal to grant a lawful development certificate for "Garden improvements including new patio areas, pathways, pool, sauna and pergola".
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Costs order

1. In exercise of the powers in section 250(5) of the Local Government Act 1972 and Schedule 6 to the Town and Country Planning Act 1990 and all other enabling powers in this behalf, Amber Valley Borough Council are ordered to pay to George Tyler the costs of the appeal proceedings described above, such costs to be assessed in the Senior Courts Costs Office if not agreed.
2. The applicant is invited to submit to Amber Valley Borough Council, to whom a copy of this costs decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Reasons for the costs order

3. The Government's planning practice guidance indicates that the parties to an appeal are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, the party may be subject to an award of costs.
 4. The applicant maintains that the Council have acted unreasonably and delayed development that should clearly have been allowed to go ahead. He states that the Council's planning officers have misinterpreted the provisions of Article 2(2) of the Town and Country Planning (General Permitted Development) (England) Order 2015 and in doing so have wrongly concluded that the proposed development requires planning permission when it benefits from the deemed planning permission granted by the Order.
 5. The applicant maintains that during the application process the planning officers stated their intention to refuse the application based on the patio constituting a raised platform greater than 0.3 metre high, despite his agent pointing out on numerous occasions that they had misinterpreted Article 2(2)
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and forwarding six appeal decisions supporting his case. The officers' response was that they had always measured the height of development at its tallest point. When it was pointed out that this meant that they had consistently been incorrect, they stated that they had a legal opinion that supported their view, but when asked to share this opinion they refused to do so. The applicant has a counsel's opinion that supports his view and this was supplied to the Council with his appeal statement.

6. The Council maintain that their actions were reasonable and in accordance with relevant planning legislation and guidance. They state that they acted reasonably throughout the application process by thoroughly assessing the proposals against the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 and that their interpretation of Article 2(2) was based on a consistent and established practice of measuring the height of structures at their tallest point. They maintain that this approach is supported by legal advice obtained by the Council, which, while not disclosed, was sought to ensure the accuracy and legality of the decision-making process and was relied on in good faith.
7. The Council state that they reviewed the appeal decisions supplied by the applicant but determined that the specific circumstances of the current application warranted a different conclusion. This decision was based on the unique context and details of the proposal, which involved a raised platform exceeding 0.3 meters in height. The Council submit that they have acted reasonably and in accordance with the relevant planning legislation and guidance; the refusal to issue a lawful development certificate was based on a thorough and considered assessment of the proposals and the application for an award of costs should be dismissed.
8. My appeal decision explains why the Council's reason for refusing the application did not stand up to scrutiny as a matter of fact or on the correct interpretation of the Order. The Council did not supply an adequate explanation as to why the specific circumstances of this development differed from the principles set out in the other appeal decisions and they did not explain the details on which the legal advice they relied upon was based. In addition, the appeal was unreasonably defended because, if the Council's case had been properly reviewed after the appeal statement including the counsel's opinion had been received, it should have been obvious that the case had no prospect of succeeding.
9. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the planning practice guidance, has been demonstrated and that a full award of costs is justified because the entire appeal could have been avoided. I have therefore allowed the application for costs and made the costs order set out above.

D.A.Hainsworth

INSPECTOR