
Costs Decision

Site visit made on 18 February 2025

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 May 2025

Costs application in relation to Appeal Ref: APP/E2205/X/24/3349328 Land adj to Oakdene, Tenterden Road, Biddenden, Kent TN27 8BL

- 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 Ms Michelle Arnold for a full award of costs against Ashford Borough Council.
 - The appeal was against the Council's decision to refuse to issue a certificate of lawful use or development (LDC) for the use of the land and buildings for residential, workshop and storage purposes.
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Decision

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

Reasons

2. Paragraph 030 of 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.
3. The applicant here considers that the Council has acted unreasonably in failing to notify her of its view that the fire damage in 2017 led to the creation of a new chapter in the planning history of the appeal site. The applicant also considers that the Council misapplied case law in attempting to justify its decision.
4. The costs award sought is being claimed on substantive rather than procedural grounds. That said, the applicant firstly makes reference to an e-mail exchange between her agent and the responsible case officer which gives an ongoing account as to how the application for the LDC proceeded, being ultimately refused. Mention is then made to the fact that during this exchange the Council made no reference of the *Jennings Motors Ltd* case law – a judgement which I discuss in full in my main decision letter – that it seemingly relied upon in assessing the application and reaching its decision.
5. I am in agreement with the applicant that the said judgement was not strictly applicable to the current case, although I have explained in my decision letter that this reliance was in response to what it saw as the applicant's intention to reconstruct the outbuilding and the implications of such for the planning position. On this basis I consider that the Council was pre-empting the consequences of any such development. To that end, although premature, I can see the relevance of the said case law.

6. Nonetheless, the onus of proof in dealing with s191 applications rests with the applicant, and it is thereby the applicant's responsibility to put forward case law and other supporting material at the outset of the submission which they feel is relevant to the application in hand. Likewise, it is also the job of the applicant, where necessary, to counter the applicability of any judgements cited by the Council, as relevant. As such, although it might have been more courteous if the case officer had brought *Jennings* to the applicant's attention prior to issuing its decision, it was not bound to take this approach.
7. However, this is all somewhat peripheral as the subsequent appeal did not turn on the above point. Other matters, instead, proved to be the determinative factors and, the evidence available was not so compelling as to suggest otherwise. Accordingly, I am not convinced that withholding case law details or information made any difference to, or prejudiced, the applicant's case in this instance.
8. For the reasons given above, I am not of the view that the appeal could have been avoided. Accordingly, I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
9. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR