



Costs Decision

By A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 19th June 2025

Appeal Ref: APP/J1535/X/24/3350742

High Tawney, Tawney Common, Theydon Mount, Epping CM16 7PX

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Tony Andrews for a full or partial award of costs against the Council of the London Borough of Epping Forest.
 - The appeal was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) for use of a residential outbuilding as an annex.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. 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.
3. My appeal decision explains why I have found the appeal fails and I will not rehearse the reasons here. Turning first to procedural concerns, it seems the respondent authority did not issue a formal decision within the statutory timeframe, but there was a right of appeal against non-determination. In any event, the decision notice was issued about two working days late.
4. The respondent did not use its discretion to seek an amendment to the description of the LDC application. As the PPG explains, an application needs to describe precisely what is being applied for. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.
5. The respondent introduced the original planning permission document (ref EPF/1203/94) at a late stage in the appeal process. I understand that the original permission was supplied for background information: the respondent says the planning permission would not have led to a different outcome. The applicant's agent could not find the decision online nor was it available via the authority's planning portal, yet the latter has in its possession a register. Surprisingly, the delegated report does not appear to refer to the document and yet planning status and history of the application site is highly relevant. I consider that the original permission should have been part and parcel of the overall assessment because of its effect and scope. As I have already said elsewhere, it effectively prevents any other use of the garage except car parking and ancillary storage. It is a relevant material consideration.
6. In terms of substance, the respondent's analysis and approach to the determination of the LDC application was incorrect. Nonetheless, a statement of case was submitted and, in essence, arguments as to why the authority considered the proposed development to be unlawful were set out. The applicant disagreed with those arguments, nonetheless, I consider that the respondent submitted sufficient evidence to substantiate its stance. However, the

late introduction of the original planning permission document added a further complication, which the respondent had to address given its relevance to the case.

7. The applicant's agent responded to the late submission at final comments stage, but, had the original planning permission formed part of the authority's initial assessment, perhaps a different tact could have been taken. I consider that the arguments made by the respondent about the relevance of the conditions imposed on the original planning permission at statement stage came as a surprise to the applicant. The respondent authority should have been more diligent in searching the site planning history – perhaps that's a learning point. For now, I find that the procedural irregularity led to extra expense for preparatory work that would not have otherwise arisen.

Conclusions

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. However, that is limited to the late submission of the original planning permission for the detached garage and the applicant's arguments in defence at final comment stage. On the particular circumstances of this application, it has been demonstrated that a partial award of costs is justified.

Costs Order

9. 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 the Council of the London borough of Epping Forest shall pay to Mr Tony Andrews the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in producing arguments directly linked to the submission of planning permission document reference EPF/1203/94 at statement stage, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Council of the London Borough of Epping Forest, to whom a copy of this decision has been sent, details of those specific and particular costs with a view to reaching agreement as to the amount.

A U Ghafoor

INSPECTOR