
Costs Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 1 August 2025

**Costs application in relation to Appeal Ref: APP/A3655/X/25/3360994
7 School Cottages, Mayford Green, Woking GU22 0PN**

- 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 Centaur Estates Ltd for a full award of costs against Woking Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the construction of a single storey outbuilding to provide gym and home office ancillary to existing property.
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Decision: the application is refused

Reasons

1. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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. The PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include a lack of co-operation with the other party and preventing or delaying development which should clearly be permitted having regard to national policy and any other material considerations.
2. The essence of the applicant's claim for costs is that the Council have not acted in a proactive or friendly manner throughout the application. Whilst it may have been helpful to have done so, as the Council point out there is no requirement for a local planning authority to engage with an applicant who has submitted an application for an LDC.
3. In that respect, the submission of an application for an LDC may be distinguished from an application for planning permission. The latter involves the subjective assessment of the proposed development involving the exercise of planning judgement. In the determination of such an application, it is not uncommon for the Council to engage in discussion and/or negotiation with applicant, possibly as a result of considerations arising out of consultation responses and/or objections from the occupiers of neighbouring properties.
4. That is typically not the case with an application for an LDC. The assessment required with an LDC application is completely different, involving (in this case) an objective assessment of the proposal against the criteria set out in the Town

and Country Planning (General Permitted Development)(England) Order 2015 (GDPO). Aside perhaps for clarification on a particular point, there would ordinarily be no requirement for the Council to engage with the applicant in determining the application.

5. The Council also makes the point in response to the application for costs that it offers a pre-application advice service which the applicants did not avail themselves of. It is difficult to sustain a claim that the Council have not acted in a proactive or friendly manner throughout the application when the applicant did not take that opportunity to engage with the Council before the application was even submitted.
6. For all these reasons, I find that the Council did not act unreasonably in this respect.
7. The applicant explains that the LDC application subject to this appeal was a resubmission of the same application made on 6 June 2024 (Council Ref: PLAN/2024/0413. This was refused due to genuine error with the wording in the application, specifically the word "Dwelling" was used instead of word "Outbuilding". Notwithstanding the first application, the Council refused the same application for the second time despite, in the applicant's view, not being in breach of very clear criteria in the GPDO, in so doing neglecting householder rights and needs altogether.
8. In response, the Council fairly makes the point that the applicant had the benefit of the refusal of that application (PLAN/2024/0413), where the Council's reasoning was clearly set out in the Delegated Officer Report. It is instructive that, despite this, the applicant proposed an identical outbuilding on the subsequent application which is the subject of this appeal. It is not possible to say that the applicant incurred wasted costs in submitting this appeal when the scheme was not modified to take account of the reasons why the previous identical application was refused, or at the very least providing comprehensive reasons why those reasons should not apply.
9. Instead, the applicants sought to rely on appeal Decisions which, in their view, were comparable to the appeal proposal and which provided justification for it. In adopting that approach, the applicants/appellants fell into the trap of relying on appeal decisions for developments which could be distinguished on their facts from the development that was proposed. It is a fundamental principle of planning control that each scheme must be considered on its own merits. Nowhere is that more true than in relation to Class E, Part 1, Schedule 2 of the GPDO.
10. As the appeal Decisions cited by the applicant/appellant clearly demonstrate, consideration of whether an outbuilding is reasonably required for a purpose incidental to the enjoyment of any particular dwellinghouse is highly fact sensitive. The fact that an outbuilding of a given floor area is found to be reasonably required for a purpose incidental to the enjoyment of one dwellinghouse is no guarantee that the same would apply to another outbuilding to which different facts and circumstances apply.
11. The grounds of which the applicants claim for costs is made were extended somewhat in their Final Comments on the Council's response to the initial application for costs with the introduction of three additional points. The Council have not had an opportunity to comment on that response. In the

interest of fairness, I did consider whether I should afford the Council an opportunity to comment on the new points made by the appellant. However, having considered those points, I am satisfied that I can deal with them here without causing injustice to the Council.

12. Firstly, the applicants contend that although the Council quote the *Emin* case, which confirms that the size of the structure is not determinative, they appear to focus solely on the fact that the structure is of 63m² internal floorspace, which they say meets the minimum size standards for a one or two bedroomed dwelling. The appellants suggest that this would indicate that they have not considered the nature of the use, only the size of the outbuilding. The applicants consider that this constitutes unreasonable behaviour.
13. This is plainly incorrect. On any reasonable reading of the Delegated Report it is apparent that the Council is focused on whether the outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The Delegated Report correctly references the judgement in *Emin*, the leading judgement on this issue, and quotes in full Class E, Part 1, Schedule 2 of the GDPO, assessing the outbuilding against every criterion in turn.
14. On my reading, by referencing the "Technical Housing Standards - Nationally Described Space Standard" (2015), the Council was simply making the point that the proposed floor area of 63m² would exceed the minimum floor area for both one and two bedroom dwellings and that this was indicative of the excessive size of the proposed outbuilding. That is a valid comparison to draw but does not, in view, indicate that the Council considered the proposed outbuilding was intended to be anything other than incidental to the enjoyment of the dwellinghouse as such. I find nothing unreasonable in that.
15. Secondly, the applicants refer to a LDC that was granted in April 2013 (Council Ref: PLAN/2012/1206) for an outbuilding to provide a gym, study and toilet with a floor cumulative floor area of 57.45m² at 10 School Cottages. The point being made here is that, in the applicant's view, the Council are clearly not determining similar applications in a consistent manner. The applicants consider that this is unreasonable behaviour.
16. The salient point, however, is that whilst similar in terms of the accommodation proposed the two developments are not the same in terms of how that accommodation is provided. I set out in my main Decision the reasons why the outbuilding at 10 School Cottages can be distinguished from that at 7 School Cottages. It follows that the Council have not determined similar applications in an inconsistent manner, such that the Council has not acted unreasonably in this respect.
17. Finally, the applicants complain that in determining the application the Council focus on the fact that there is a "main entrance" to the front elevation. The applicants quite rightly point out that this is of no consequence in relation to the scale and nature of the use proposed. But I do not take the Council's comment to imply that the building that contains those uses needs to be subordinate in terms of its physical size albeit, in my view, that is a relevant consideration. On my reading, the Council is simply noting that there are two entrances to the outbuilding, one of which happens to be the main entrance. Nothing more, nothing less. I do not see anything unreasonable in that.

Conclusion

18. The PPG is quite clear: costs may only 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. I find that the Council has not acted unreasonably in the terms set out in the PPG at any point in the appeal process or beforehand. In the absence of any unreasonable behaviour, the PPG makes it clear that any award of costs is not justified.

Paul Freer
INSPECTOR