



Costs Decision

Site visit made on 10 December 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2026

Costs application in relation to Appeal Ref: APP/D3830/W/25/3371598

5 Silverdale Road, Burgess Hill, West Sussex RH15 0ED

- 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 Mr James Smith for a full award of costs against Mid Sussex District Council.
 - The appeal was against the refusal of planning permission for a single storey oak framed garage building without complying with condition 1 attached to planning permission Ref DM/23/0201, dated 17 July 2023.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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. Unreasonable behaviour may be either procedural or substantive and examples of both are given in the PPG.
3. The application for costs alleges that the Council behaved unreasonably in a substantive sense, citing several specific behaviours listed in the PPG. In each case, the contention that the Council's approach was unreasonable stems from the appellant's argument that the garage which is under construction is lawful by virtue of the planning permission granted under reference DM/23/0201. On that basis, he argues that a further grant of planning permission is not required. More specifically, it is argued that the Council did not give adequate consideration to a legal opinion to that effect provided with the application, or the case law cited, and consequently they failed to give adequate consideration to the extant planning permission as a 'fallback position'.
4. It is apparent from the evidence from both parties, including copies of correspondence between them, that the lawfulness of the garage as constructed is a matter on which there is a difference of professional opinion. The appellant was advised in a letter from the Council on 11 December 2024 that an application for a Certificate of Lawful Development would provide an appropriate mechanism to resolve that question, and the Council's response to the costs application continues to present that as a possible way forward. However, no such application appears to have been made.

5. A planning condition requiring the Council's approval of the final ground and floor levels may have prevented any dispute arising in the first place. Nevertheless, having reached the point where non-compliance with the approved plans was alleged, submission of an application under s73A of the Town and Country Planning Act 1990 was also among the options open to the appellant. That is the option which he took. Having received the application to vary the approved plans, it was not unreasonable or inappropriate for the Council to determine that application as submitted, and I have done the same.
6. Furthermore, under the heading 'other material considerations', the Council's Officer Report did identify the extant planning permission as a primary consideration. Arguments which had been presented on the lawfulness of the development were rehearsed, including the question of whether the concrete slab and brickwork beneath it amount to enabling works, as argued in the legal opinion, and whether the principles for measurement on sloping land in the technical guidance on permitted development rights¹ are applicable. As such, there is clear evidence that the Council did treat the extant planning permission as a material consideration when the application was determined.
7. The relevant planning issues are matters of judgement and I have reached a different conclusion from the Council based on the evidence before me. Nevertheless, although I have allowed the appeal subject to conditions, that does not imply any acceptance that the way in which the Council considered the application, or their decision, was unreasonable.
8. For the reasons given above, I conclude that the Council's approach to the application did not amount to unreasonable behaviour. Consequently, notwithstanding that the appeal has been allowed, there is no evidence that unnecessary or wasted expense has been incurred in the appeal process. Therefore, an award of costs is not warranted.

Jane Smith

INSPECTOR

¹ MHCLG Permitted development rights for householders: Technical Guidance September 2019