



Costs Decision

Site visit made on 26 August 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2026

Costs application in relation to Appeal Ref: APP/B0230/X/24/3356927

36 Letchworth Road, LUTON, LU3 2NU

- 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 Mr Mohammed Faiz for a full award of costs against Luton Borough Council.
 - The appeal was against the refusal of an application for a certificate of lawful use or development for the erection of a garage outbuilding for the parking of a car.
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Decision

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

The Application on Behalf of Mr Faiz

2. The application is a certificate 'proposed'. The assessment must be based on that basis. The fact that there is no crossover or the Council would not approve a crossover in the future is not material to the case of lawfulness. A residential garage for 1 vehicle would meet the test of 'incidental'. Furthermore, all activities that constitute 'incidental use' could occur in the garage in the future which includes the parking of a vehicle.
3. On the second point, the fact that there is already a building on site that could be used for storage is again not material. The test relates to the appeal building. Indeed, taking the LPA's position forward, this could be argued in any situation where say a dwelling is furnished with a shed. The LPA position would be that any proposed building (incidental) would not be required and therefore not incidental as the shed would be capable of storing for example garden furniture. The building is used for additional ancillary accommodation in any event.
4. On the third point, the GDPO does not require a justification as to why a second crossover would be required and this could be achieved with satisfaction vision plays. Lastly, the building is proportionate in scale and its use in principle is incidental for the purpose of the GDPO and a dwelling house. The use and size of the garage is legitimately subordinate to the main house. The Appellant has had regard to *Emin v SSE & Mid Sussex DC* (1989) where it was held that the size of an outbuilding is not relevant for the purpose of Class E, but the building must be required for some incidental purpose. As stated above, the building will be used for the parking of a vehicle (private) for the sole use of the residents of No.36 Letchworth Road. The use and building is commensurate with the host dwelling and accommodates secondary accommodation and not primary accommodation.

5. The Council has erroneously assessed the submission and refused to issue the certificate on matters which are without merit or beyond the scope of the GDPO. The applicant seeks a full award of costs on that basis.

The Response of Luton Borough Council

6. The LPA would reiterate the fact that the application was assessed based on what has been submitted by the applicant. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. In addition, Appeal Decision APP/B0230/X/20/3248051 highlighted that the term “required” for the purposes of applying Class E should be interpreted as reasonably required, and not so broad as to encompass the “unrestrained whim” of an occupier.
7. In considering Class E proposals the critical test to be applied is firstly; (i) whether the use of the proposed outbuilding, in the context of the whole planning unit, are intended to be and would remain ancillary or subordinate to the main use of the property as a dwellinghouse, and secondly; (ii) whether the proposed outbuildings are reasonably required in order to accommodate those uses.
8. The submitted Existing and Proposed Floor Plan (JJ23-036-001) and Elevation clearly indicate the proposed outbuilding would be used for parking a vehicle and shows gates which access Howard Close however the Site Location Plan (JJ23-036-002) failed to demonstrate the site has access to Howard Close. The strip of land belongs to part of the landscaping scheme of “Erection of 37 houses” of Howard Close (LPA Ref: 85/00938/FUL) and the applicant provide no evidence that they have the right of the way over the land.
9. Without an access/vehicle crossover, the outbuilding cannot accommodate the use as proposed “for parking a vehicle”. The submitted document provides no details why extra storage for garden items would be required given the site already benefits from an existing 30m² outbuilding and failed to demonstrate floor space allotted to the proposed store uses are reasonably required in order serve the purpose incidental to the enjoyment of the dwellinghouse. Therefore, the LPA considered the lack of a crossover and the existing outbuilding are material to the lawfulness of the proposed development. At this time, the LPA have not received any application for a crossover to Howard Close.
10. The Appellant states that by failing to issue an LDC, the LPA have behaved unreasonably, which has resulted in unnecessary and waste expense of an appeal. The LPA would contend that the appellant had alternative routes which he could have pursued at less cost to the resolve the planning issues identified, for example pre-app discussion or resubmission. The onus is the appellant to demonstrate that the use and scale and size are ancillary, which as indicated in the case officer report he has failed to do.
11. On the basis of the foregoing the LPA would contend that the application was appropriately assessed on the basis of the submitted information and that the appellant has not been put to any unnecessary or wasted expense in the appeal and therefore the Council has not behaved unreasonably in this instance to warrant an award of costs.

12. For the above reasons, the Council consider that the claim for an award of costs is unreasonable and unjustified. The Inspector is therefore respectfully requested to refuse the award of costs application.

Reasons

13. 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.
14. Awards may be made on procedural or substantive grounds. The applicant's case in this case is based on the substantive matters relating to the case. Paragraph 049 of the PPG in relation to costs identified that Local Planning Authorities are at risk of an award of costs where they refuse applications which should clearly be permitted, having regard to the development plan or other material considerations; where they act contrary to well-established caselaw; rely on vague, generalised or inaccurate assertions; or where they do not review a case promptly following the lodging of an appeal.
15. Some of those matters relate more specifically to substantive matters in relation to the determination of a planning application. The matter in this case was one of lawfulness. As such, questions of compliance with development plans policies had no bearing on the decision. Essentially, the question is whether the Council's decision to refuse the application was reasonable, having regard to established caselaw and practice.
16. The Council was clearly aware of relevant caselaw, judging by the way in which the delegated report was written and reference to other appeal decisions. Reference was made to the need for proposals to be "reasonably required" and not based on the "unrestrained whim" of the householder. Both of those terms are recognisable from leading judgments in established caselaw¹.
17. The purpose of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) is to permit a range of structures and outbuildings that are required for a purpose incidental to the enjoyment of the dwellinghouse.
18. A domestic garage for the parking of a single car clearly falls within the scope of what can be considered incidental. It is precisely the type of structure one has in mind when one thinks of the general purpose of that section. Domestic sheds, garages, summerhouses and the like. On occasion, one may come across proposals for very large garages, perhaps to store collections of classic cars or motorbikes and a judgement is required as to whether the scale and function is genuinely incidental to the enjoyment of the dwellinghouse or, as caselaw states, is based on the unrestrained whim of the homeowner.
19. However, the present proposal is far removed from such cases. It is proposed to house a single vehicle. The fact that there is another outbuilding does not entail that the structure would not be incidental. That structure is an outbuilding used for storage whereas the proposal for parking would serve a different purpose. That is perfectly common in domestic outbuildings. The GPDO does not seek to limit the

¹ Harrods v SSETR [2002] JPL 1258 & Emin v SSE [1989] JPL 909

- number of outbuildings that may be constructed and there was no logical reason to conclude that a single garage would not be of an incidental nature, as I found in my associated decision.
20. However, that does not dictate that the Council's position was unreasonably held. The fact that there is an existing outbuilding is not immaterial as suggested by the appellant. It was a factor the Council was entitled to consider in assessing the question of whether the proposed building was of an incidental nature. Whilst the GPDO permits multiple outbuildings, a judgement is required on the scale and use of such buildings relative to the use of the dwellinghouse.
 21. The house itself is modest and the two buildings would take up a decent proportion of the outdoor space. Overall, whilst I disagreed with the Council's position I would not go so far as to say that its conclusion was unreasonable. It was simply a matter of judgement.
 22. Turning to the issue of whether a means of access could be secured, the Council appears to have conflated private interests with the question of whether the building itself would be lawful in planning terms. The Council refers to the land being within a landscape strip but has not suggested that there would be any breach of condition or unauthorised development if access was to be gained from Howard Close. Rather, its case appears to be one of land ownership and whether an access could be achieved.
 23. For reasons explained within my decision, whether the highway authority would permit a dropped crossing under their own legislation or operating procedures is neither here nor there in terms of whether the proposal would be lawful in planning terms.
 24. If it turned out that the access could not be secured and the appellant constructed the building for a different purpose than parking a car then he would not be able to rely upon the CLOPUD granted which is for a building for that specific purpose. However, whether such access could be gained was essentially a private matter. The proposal was to construct a garage for a single car with an access point from Howard Close. No information has been presented from the Council to suggest that providing an access from the rear of the property would be unlawful in planning terms.
 25. Accordingly, it appears to me that the Council did get side-tracked in that regard and focussed on matters outside the remit of planning legislation. Whether that was unreasonable is finely balanced. However, if a garage for the parking of a vehicle is proposed it is not an unreasonable question to ask how access would be gained, particularly if a site was landlocked. It is not entirely irrelevant as suggested by the applicant because the matter goes to the functionality and proposed purpose of the building. Moreover, whilst it does now appear that the appellant owns the strip of land, that information was only submitted with the appeal and was not available to the Council at the time the decision was made.
 26. In any event, the Council was not satisfied that the proposal was of an incidental nature and, on balance, its decision was not unreasonable in that respect. As such, the appeal would need to have been made in any event and matters relating to the access did not add notably to the overall expense.

27. Putting all of that together, whilst the Council did get drawn into non-planning matters in reaching its conclusion, the decision as a whole was not unreasonably made on substantive matters. In the absence of unreasonable behaviour it follows that there are no grounds for an award of costs and I shall refuse the application.

Chris Preston

INSPECTOR