
Costs Decision

Site visit made on 8 January 2016

by M Seaton DipTP MRTPI

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

Decision date: 14 March 2016

Costs application in relation to Appeal Ref: APP/A4520/W/15/3133725 46 Soane Gardens, Whiteleas, South Shields, Tyne & Wear, NE34 8NN

- 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 Miss Denise Rutherford for a partial award of costs against South Tyneside Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for change of use of the dwelling and curtilage to a mixed residential and business use, with the business use relating to dog boarding and dog grooming, with a timber clad structure to the gable elevation of the property providing accommodation in connection with the dog grooming.
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Decision

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

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. Whilst the Guidance sets out a series of examples of behaviour whereby either a procedural or substantive award of costs may be justified, neither list is stated to be exhaustive. The application for costs is timely.
3. The applicant contends that the Council's advice at a pre-application stage regarding the proposal to run a business from home, was misleading and led to unnecessary expense in making a planning application which ultimately led to the refusal of planning permission. In particular, the applicant has drawn my attention to the fees expended in relation to the engagement of an architect to prepare plans as well as the submission of a planning application fee. The appellant has also highlighted the Council as having advised delay in submitting the application pending the outcome of a planning appeal for a similar development, to which it is alleged the Council ultimately attributed little weight.
4. In respect of the issue of expenditure in connection with advice provided by the Council at the pre-application stage, I have carefully considered the applicant's contention regarding its necessity. However, I am satisfied on the basis of the issue of use and the conclusions I reached in my procedural matters paragraph at the beginning of the appeal Decision Letter, that the resultant use of the property and curtilage would be for all intents and purposes a mixed use, which including the timber structure, would require planning permission. I accept

- that if advice to the contrary had been provided regarding the need for planning permission that this would have been confusing, but I have no conclusive evidence before me that such advice was provided, and I accept the Council's point that the detailed costs associated with the planning application and its preparation would have been required in any event in connection with the making of the planning application. I do not therefore accept that it has been demonstrated in this respect that unreasonable behaviour has taken place which has caused the applicant to incur unnecessary or wasted expense.
5. Turning to the matter of the Council issuing advice to await the outcome of the other planning appeal, I do not have any conclusive evidence before me that such advice was provided and the appellant has been unable to provide me with any precise details as to when it was received. In any event I note that the Decision Letter for the appeal at No. 174 Hardie Drive was issued and dated 8 January 2015, and that this would therefore have been in the public domain and available to the applicant for just under 5 months prior to the date of the planning application. In any event, I am mindful that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise, and whilst as a material consideration I have referred in my Decision Letter to the conclusions reached in the other appeal, I have made it clear that the appeal proposals have been determined on their own planning merits. No evidence of unreasonable behaviour on the Council's part in this respect has therefore been demonstrated.
 6. On the basis of the above conclusions, and despite my conclusion to allow the planning appeal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.
 7. For the reasons given above, I refuse the application for an award of costs.

M Seaton

INSPECTOR