
Costs Decision

Site visit made on 22 November 2016

by Jean Russell MA MRTPI

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

Decision date: 23 December 2016

Costs application in relation to Appeal ref: APP/E2001/X/16/3145202 The Annexe, Drewton Lane, South Cave, Brough, Yorkshire, HU15 2AG

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Richard William Turner and Mrs Charlotte Lucy Turner for a full award of costs against East Riding of Yorkshire Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a separate dwellinghouse in occupation by a single family and curtilage and access.
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Decision

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

Reasons

2. The online 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 process¹.
3. The appellants seek a full award of costs on the basis that it was unreasonable for the Council to refuse to grant a LDC, and this caused them to incur the costs of making an unnecessary appeal. The cases for the parties were set out in writing and need not be repeated, but I shall address the points raised in order.

Inaccurate Facts

4. The appellants submit that the Council's description of the permitted use of the Annexe as an 'ancillary office and study' was inaccurate. However, condition no. 1 imposed on the 1994 permission restricted the use of the Annexe to purposes 'incidental' to the enjoyment of the dwellinghouse, Ash Lea. As I explained in the appeal decision, the terms 'incidental' and 'ancillary' may be used interchangeably. It might have been preferable for the Council to directly quote the condition, but nevertheless their analysis was not inaccurate, unclear or unreasonable.

Well-established Case Law

5. PPG paragraph 16-049-20140306 advises that a local planning authority may be at risk of an award of costs if they act contrary to or do not follow well-established case law. The Council made the following errors when making its decision:
 - The Council determined the LDC application on the basis that it concerned a breach of condition rather than a material change of use. The Council also considered that the breach of condition could only have become lawful after a period of ten years – even though the appellants had pointed out that the four year rule applied, following *FSS v Arun DC* [2006] EWCA Civ 1172.

¹ PPG paragraph ref ID: 16-028-20140306

- The Council stated that there could not have been any breach of condition and *Arun* could not be relevant if the Annexe was occupied by people 'closely related' to those living at Ash Lea. At appeal stage, the Council also concluded that a material change of use could only have occurred 'if the occupiers weren't related'. Those assessments were wrong.
 - The Council misapplied *Uttlesford DC v SSE & White* [1992] JPL 171. It was held that, if a detached garage with private living accommodation is part of the same planning unit as the dwellinghouse *and* the planning unit remains in single family occupation, no material change of use is involved. It was not held that that occupation by relatives is an 'ancillary act' or the primary consideration.
 - The Council had express regard to the appellant's evidence but did not address the question of the planning unit when considering the LDC application. The Council treated family relationships as determinative and did not consider the *Burdle* tests, although that case was cited in *Uttlesford*.
6. I am satisfied that the Council did not follow well-established case law and that was unreasonable, but it is still necessary to ask whether the appellants incurred wasted expense. To an extent, I find it unsurprising that the Council was confused because the appellants did not describe the basis of their LDC application clearly. Their planning statement included references to case law without explanation as to its significance, and there was no commentary on the planning unit.
7. The appellants fleshed out their submissions at appeal stage, but indicated that 'ancillary occupation' would be in breach of condition when that was not correct². The appellants had regard to the planning unit and *Burdle*, but suggested that *Uttlesford* could be distinguished because the Annexe was not within the 'curtilage' of Ash Lea³. The Council was not the only party to have difficulties with case law.
8. It is also important that Council actively sought to defend and substantiate its decision to refuse a LDC. In its final comments, the Council addressed the issue of the planning unit and still argued that the appeal should be dismissed. If the application had been considered as relating to a change of use, and with regard to the four year rule, it is still likely that the Council would have relied upon *Uttlesford*. It is also likely that the Council would have started from the point that, in October 2005, the 'ancillary office' was in the same planning unit as Ash Lea.
9. In the appeal decision, I addressed the principal submissions. I found that *Uttlesford* was relevant, even if the Council had misconstrued it, and that the appellants had not discharged the onus of proof. While a costs decision does not automatically follow that of the appeal, the probability is that the Council would have refused the LDC application even if it had followed well-established case law. The appellants were not caused to make an unnecessary appeal.

Requirement for Additional Evidence

10. The Council's reason for refusing the LDC indicated that the appellants' evidence did not address the issues raised. I am not persuaded that this statement or any other request for information simply followed the Council's misunderstandings of case law. As noted above, the appellants' planning statement was unclear. They provided additional evidence at appeal stage, indicating that they realised this was necessary to make their case. It was not unreasonable for the Council to suggest that the appellants had provided insufficient evidence with the application.

² Appeal statement paragraph 2.6

³ Appeal statement paragraph 4.13

11. The Council has referred to PPG paragraph 16-051-20140306, which provides that appellants may be at risk of an award of costs if they supply information during an appeal which was requested but not provided at application stage. The report on the LDC application does not indicate that a request for more evidence was made before the decision to refuse was taken⁴. The Council has not sought an award of costs and, for the avoidance of doubt, it was not unreasonable for the appellants to provide additional information during the course of the appeal.

Conclusion

12. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and the application should be refused.

Jean Russell

INSPECTOR

⁴ The Council's LDC report indicates that the appellants had submitted additional evidence compared to a previous LDC application but that is a different matter.
