
Costs Decision

Site visit made on 10 January 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 20 January 2017

Costs application in relation to Appeal Ref: APP/X0360/X/16/3153354 Bluebell Farm, Commonfield Lane, Barkham, Wokingham RG40 4PR

- 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 William Elgar for a full award of costs against Wokingham Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the existing chalet or mobile home requires a lawful development certificate as has had separate residence to the main dwelling for more than 4 years. The dwelling has been occupied since April 2010, therefore 4 years and 8 months to date.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The application for costs was included as Appendix 3 to the appellant's initial grounds of appeal statement. The Council's response was made by letter dated 12 September 2016 and the appellant's further response to that was sent by email on 30 September 2016.
 3. 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.
 4. Set out in the appeal decision is the power available to both the local planning authority and the Secretary of State on appeal in s191(4) of the Act to determine if, on the information available, a development different from that for which the certificate of lawful use or development (LDC) has been sought might be lawful. Both parties have pursued the appeal on a basis different to that on which the LDC application was made.
 5. Having refused the LDC application the Council then embarked upon an enforcement investigation. It came to the view that the chalet was in fact a caravan within the meaning of the statute. It would still be able to enforce against such a use of land and therefore considers that the LDC should not be granted on appeal.
 6. Partly as a response to the Council's enforcement investigation and partly as a result of a review by the (new) agents representing the appellant at appeal, the case now made by the appellant is that the chalet is a building. Since it had been in place for more than four years at the date of the LDC application it is
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- immune from enforcement action by passage of time and the LDC should be granted.
7. In my opinion, given the nature of s191(4) of the Act it was not unreasonable of either party to present the best information that it could so that the appeal could be determined. As is clear from the appeal decision, how the development carried out should be described is a matter of fact and degree judgement. However, that is not how the Council dealt with the LDC application.
 8. At paragraph 10 of my appeal decision is set out from the Planning Practice Guidance the way a local planning authority should determine an LDC application. This has been carried forward, in part, from Circular 10/97¹ which was then cancelled. Nevertheless, the advice in Circular 10/97 that ‘...the applicant’s own evidence does not need to be corroborated by “independent” evidence in order to be accepted...’ derives from what remains the settled case law to which the appellant refers.
 9. Notwithstanding the wording of the decision notice, it is plain from the officer report that the test applied was the balance of probabilities. The officer report does not dispute the statements made in the statutory declarations submitted with the LDC application; this is confirmed in the Council’s response to the application for costs. Its decision however was based largely on the failure by the applicant to provide corroborating documentary evidence such as utility bills or electoral roll data that use of the chalet was as claimed in the statutory declarations. The only evidence that may have been gained independently is what the Council says is its understanding that no council tax has been ‘...paid or applied for by the chalet’. On the face of it therefore, the Council appears not to have followed the Planning Practice Guidance in coming to its conclusion that the use of the chalet ‘...appears to be ancillary to the main house and not independent from it’.
 10. Ironically, if that was the Council’s conclusion, arguably it should have issued an LDC in those terms pursuant to s191(4) of the Act since such a use is not development at all by virtue of s55(2)(d) of the Act.
 11. To conclude, the Council should not have refused the application based solely on the lack of corroborating documentary evidence. Once it determined that the use was ancillary to the main house and not independent from it, it should have issued an LDC in those terms. Either way, it should not have been necessary for the appeal to have been brought. In my judgement the Council has not followed well-established case law in either instance. That is an example given in the Planning Practice Guidance of behaviour that may give rise to a substantive award against a local planning authority.
 12. Nevertheless, for the following reason I consider that the award should be limited in this case to that wasted expense unnecessarily incurred by the appellant in preparing the initial grounds of appeal statement only.
 13. The nature of the application was very confusing. The use for which the LDC was sought is set out in the summary details above. However, at Q9 of the application form (*Please state why a LDC should be granted*) it says this:

¹ Enforcing Planning Control: Legislative Provisions and Procedural Requirements

The building has been used as a single dwelling house for more than 4 years by William Elgar's son and family who live in the chalet and maintain the area around it upon what is a large plot, with a pattern of development precedence.

14. This has only been resolved through the appeal process. As set out in the appeal decision it was not until the very final stage of that process that the appellant unequivocally stated the development for which the LDC was sought. I therefore consider that the confusing way in which the application was presented was a factor contributing to the Council's flawed decision making.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wokingham Borough Council shall pay to Mr William Elgar, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing the initial grounds of appeal statement only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Wokingham Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Brian Cook

Inspector