
Costs Decision

Site visit made on 14 December 2016

by Melissa Hall BA(Hons), BTP, MSc, MRTPI

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

Decision date: 20 March 2017

Costs application in relation to Appeal Ref: APP/D3315/X/16/3150659 Kedget Barton Farm, Churchstanton, Taunton, Somerset TA3 7RN

- 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 Tony Reynolds for a full award of costs against Taunton Deane Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the construction of a dwelling with unrestricted occupancy.
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Decision

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

The submissions for the appellant

2. Local planning authorities are required to provide evidence to substantiate each reason for refusing to issue a lawful development certificate based on substantive legal precedent and principles.
3. The Authority failed to provide a complete, cogent and equitable justification for the reasons for refusal. The precedent cases cited by the Authority relate to cases where the approved developments were incomplete and other material circumstances differed from the appellant's case. The cases cited by the appellant have not been addressed by the Authority, nor has it sought to differentiate between these cases and that the subject of the appeal. It has simply dismissed the physical changes to the design and siting as being 'not material', without reference to any substantive or authoritative precedent to substantiate its case. Neither did it consider the cumulative effects of the changes. This represents unreasonable behaviour.
4. The Authority failed on a procedural basis for two reasons. It did not produce two relevant documents when the planning file was inspected and it therefore failed to maintain a complete planning file. Furthermore, the Authority lost the appellant's planning statement only to find it at a later date, albeit it resulted in additional professional work being undertaken on behalf of the appellant. Such actions are tantamount to maladministration which represents unreasonable behaviour.

The response by the Authority

5. The relevance of the case law cited by the Authority in the determination of the application for a lawful development certificate is fully explained in the analysis provided with the decision notice and in its Statement of Case. The principles set out therein are not restricted to the facts of those cases, but are of general
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application. It is therefore considered that the reasons for refusal have been fully explained by reference to relevant case law and the facts of this particular case.

6. It is not disputed that the dwelling and access are in a different location to that shown on the approved plans. It is the materiality of those differences that is at issue. Similarly, each variation from the approved plans was considered and an explanation given as to why the change was not material. The analysis went on to consider whether the works taken as a whole have 'substantial useability' in the context of the approved development. Thus, the Authority has not acted unreasonably.
7. It is accepted that some correspondence was missing from the planning file albeit the letter was available to view on the website. It is also the case that the Authority temporarily mislaid the appellant's appeal statement. However, the statement was subsequently found and the appellant was not put to the expense of providing a second copy. Be that as it may, it is not clear how the absence of a letter from the planning file or the temporary mislaying of a document has resulted in the appellant incurring unnecessary or wasted expense.

Reasons

8. The National Planning Policy Framework ("the Framework") advises that, irrespective of the outcome of the appeal, costs may only 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.
9. For the reasons given in my decision on the appeal, I have found against the Authority and concluded that the dwelling is likely to have been substantially completed in breach of the planning permission granted under Ref 10/2004/028 ("the 2005 permission"), for a period in excess of four years prior to the date of the LDC application and so as to be immune from enforcement action. I came to this conclusion based on the legal precedents before me and the particular circumstances of the case.
10. The Authority issued its decision refusing the application by reference to what it considered to be relevant case law whilst providing an analysis of the reasons for its decision. Whilst I have not been persuaded by the Authority's arguments, it nonetheless took a position on the law, which it was perfectly entitled to do. The matters at issue are based on fact and degree in each case and involve judgements which are, at times, finely balanced. In my view, it had grounds for pursuing the matter to appeal to defend its decision to withhold a lawful development certificate.
11. I understand the appellant's frustrations in respect of the missing correspondence from the planning file and the temporary mislaying of the submitted appeal statement. However, this did not result in the appeal coming into being or the appellant incurring any additional expense in the appeal process than he would otherwise have done.
12. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Framework, has not been demonstrated and that an award of costs is not warranted.

Melissa Hall

Inspector