
Costs Decision

Site visit made on 10 January 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 11 April 2017

Costs application in relation to Appeals Referenced:

Appeal A: APP/Q9495/C/16/3149120

Appeal B: APP/Q9495/C/16/3149121

Appeal C: APP/Q9495/X/16/3148383

Deers Leap, Millside, Witherslack, Grange over Sands, Cumbria LA11 6SG

- The application is made under the Town and Country Planning Act 1990, sections 174, 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Ian Parker for a full award of costs against Lake District National Park Authority.
 - Appeals A and B were against an enforcement notice alleging: Without planning permission, material change of use of land for siting a twin unit caravan used for residential purposes and Appeal C was against the refusal of an application for a certificate of lawful use for the use of a caravan as a permanent dwelling (including associated land)..
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Decision

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

Procedural Matter

2. The application for costs relates to three appeals; two of which were submitted against the service of an enforcement notice and one against the refusal of an application for a certificate of lawful use (CLU), as set out in the banner heading above. The grounds of appeal were identical in relation to the two enforcement notice appeals and the issues were closely related to the CLU appeal. Consequently, my decisions in relation to all three appeals were set out within a single letter.
3. Although the costs application relates to the conduct of the Council in relation to all three appeals, the reasons for submitting the application are the same in relation to all three and I have treated it as a single costs application.

The Case for the Applicant and the Council's Response

4. The application and the Council's response were submitted in writing and, as the parties will be familiar with those submissions, the following is a brief outline of the respective cases.

The Application

5. Paragraph 49 of the Planning Practice Guidance (PPG) sets out that Local Planning Authorities (LPAs) may be subject to a substantive award of costs. In this case the LPA has dismissed the evidence of the appellant but failed to
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provide substantive evidence or reasoning of its own. In particular, the LPA failed to give adequate weight to the statutory declaration and failed to support the assertion that the invoice related to another timber lodge. The LPA also failed to look inside the unit, despite an offer to do so, in relation to the dispute as to whether the accommodation contained a kitchen. The areas of dispute could have been reduced had the LPA looked inside the unit.

6. In addition, the appellant was able to obtain information from Council Tax officers which supported his version of events but the records referred to by the LPA could not be located. The LPA also introduced late evidence in the form of an anonymous letter and placed an unreasonable amount of weight on that letter when considering that the LPA do not accept anonymous letters in relation to planning applications.
7. Overall, the decisions of the Council are 'Wednesbury unreasonable' as no person having the same facts and evidence could have reached the same conclusion as the LPA. Therefore, a full award of costs would be justified.

The Council's Response

8. The PPG advises that, if an LPA has no evidence of its own, or facts from others, to contradict or make an applicant's version of events less than probable there is no good reason to refuse the application, providing that the applicant's evidence is sufficiently precise and unambiguous. In this case, the Council considered that the appellant's evidence was not sufficiently precise and unambiguous.
9. The anonymous letter was received after the CLU application had been determined and it is a matter for the Inspector to determine what weight to give to that letter. If the existence of a kitchen was the determining factor then the Council would have visited again to confirm its existence.
10. The Council does not believe that it has behaved unreasonably or led the applicant to incur unnecessary expense. The fact that the LPA assessed the evidence in a different way to the applicant is not evidence of unreasonable behaviour.

Reasons

11. The Planning Practice Guidance (March 2014) (the PPG) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. In this case, the applicant's submissions relate to the reasoning behind the Council's decision to refuse the CLU application and to issue an enforcement notice.
12. The burden of proof, on the balance of probability, is on an appellant to demonstrate his case in relation to an appeal under ground (d) or in relation to an appeal against the refusal of an application for a CLU. In relation to the test within the PPG the Council was not satisfied that the appellants' evidence was sufficiently precise and unambiguous. For various reasons, as set out within my associated appeal decision, I agreed with the Council. This was not a case where the evidence was so compelling that no reasonable person could have reached a different view to the appellants. There were a number of inconsistencies between the version of events provided by Mr Parker in his statutory declaration and the other evidence before me, including Council

records of previous site visits and investigations, discussions with the Council Tax department, and letters from interested parties. I also noted a lack of other evidence to demonstrate independent occupation of the caravan, such as utility bills for example. Those inconsistencies resulted in significant ambiguity and I found that the appellants had not satisfactorily demonstrated their case to warrant the grant of a CLU or to quash the notice on ground (d). Given that I concurred with the Council in those respects I cannot find that it was unreasonable for it to have served the notice or refused the CLU.

13. Moreover, there is no evidence that the Council placed undue weight on the anonymous letter which was received after the notice had been served and after the CLU application had been refused. The Council's case did not rely heavily on that letter. Similarly, whilst it may have been advisable for the Council to have entered the unit prior to serving the notice, its case relating to Mr Parker's use of the kitchen at Black Bull Barn related primarily to his comments to the Council Tax department as opposed to the level of facilities that were available in the unit.
14. In any event, had the Council inspected the unit immediately prior to serving the enforcement notice and found it to contain a fully equipped kitchen that would not have demonstrated that those facilities were in situ throughout the suggested period of occupation. The recorded discussion between Mr Parker and the Council Tax departments provided ambiguity in that respect and no supplementary evidence to support the claim that kitchen facilities had been available was provided. Thus, the absence of an internal inspection was not unreasonable in the context of the case brought by the Council.
15. Therefore, in view of the above, I am satisfied that the Council did not behave unreasonably in relation to the appeals. In the absence of unreasonable behaviour there are no grounds for an award of costs and I shall refuse the application.

Chris Preston

INSPECTOR