



Costs Decision

Hearing Held on 11 July 2017

Site visit made on 11 July 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 17 July 2017

Costs application in relation to Appeal Ref: APP/Q1153/X/17/3167854 Coach House, 3 Watts Road, Tavistock, PL19 8LF

- 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 West Devon Borough Council for a full award of costs against Mr B Gurney.
 - The hearing was in connection with an appeal against the refusal of a certificate of lawful use or development for the use of a former outbuilding/coach house as an independent dwelling.
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Decision

1. I allow the application.

The submissions for West Devon Borough Council

2. In an application for an LDC the burden of proof is on the appellant and the Council can only respond to the material with which it is presented. The appellant had opportunities to submit evidence: at the time of the first LDC application; at the second application which is the subject of the appeal; and, with the appeal documentation. In responding to the appeal the Council did not change its position in respect of the refusal. Had it had the material earlier on, then this may have led the Council to change its position. The table on pages 5 and 6 of the Council's statement is a commentary on the material put to it. The gaps in occupancy were significant but the Council now takes a different view in the light of the facts. Whilst the Council accept that where GB Lettings were finding tenants this explains the August 2006 gap in occupancy, no information had been submitted regarding letting arrangements since the letting to Gilmore.

The response by Mr Gurney

3. Evidence has been submitted with the appeal regarding the involvement of GB Lettings since 2006. The letter at Document 5 (e-mail dated 2 November 2009) indicates that they were requested to market the premises for letting following Mr Gilmore's tenancy.

Reasons

4. 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.

5. The late submission of critical evidence at the hearing in respect of an e-mail and attached signed copy of the letting terms and conditions from Sarah Heaps to Kate Williams of GB Property Lettings (Document 5) led to a short adjournment in order for the Council to consider its position. In response the Council acknowledged that had they been provided with Document 5 at the time of the application for the LDC or with the appeal documentation they would have reached a different view having been satisfied on the balance of probabilities that an LDC should have been issued.
6. I am satisfied that the need for an appeal and a hearing would have been avoided had Document 5 been submitted by the appellant at the appropriate time and the Council would not have incurred unnecessary and wasted expense in preparing for and attending the hearing.
7. The Guidance points out that all parties are expected to behave reasonably throughout the planning process. In this case, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and a full award of costs is justified.

Costs Order

8. 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 Mr B Gurney shall pay to West Devon Borough Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Mr B Gurney to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

P N Jarratt

Inspector