
Costs Decision

Site visit made on 7 August 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 29 August 2017

Costs application in relation to Appeal Ref: APP/ P1133/X/16/3163304 The Bungalow, Rollsbridge Farm, Ide, Exeter, Devon EX2 9SU

- 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 Miss Ann Barradine for a full award of costs against Teignbridge District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use as Class C3 in breach of a condition.
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Decision: The application is refused.

Summary of Submissions by the applicant: Miss Ann Barradine

1. The application for the LDC related only to the agricultural occupancy part of Condition 3(b) and the evidence submitted was sufficient for this to be granted. Evidence submitted by the appellant was clear in that it related solely to non-compliance with the agricultural occupancy condition. It was not made in respect of the personal occupancy Condition 3(a).
2. Legal advice has shown that it was possible to submit a certificate application relating to part of a condition only. However the Council refused the Certificate in respect of Condition 3(a) only and it was not open to the Council to determine a different proposal. The Council has made a procedural error in determining the application and that, in turn, has led to an unnecessary appeal.

Summary of Submissions by the respondent: Teignbridge District Council

3. The breach of the condition did not commence until 27 December 2010 and thus this is less than 10 years before the date of the application.
4. It was necessary to consider the condition as a whole as it allowed Mr Martin or a person employed in agriculture to reside at the property.

Procedural matter

5. 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.

Reasons

6. I acknowledge that the application for a certificate was made in the context of a breach of Condition 3(b) only. However, as I have noted in the appeal decision, as a matter of fact Condition 3(b) does not exist as separate entity.

7. In these circumstances it was not unreasonable for the Council to consider the terms of Condition 3 as a whole. For the reasons I have given the effect of Condition 3 would be materially changed if each subsection was considered separately because the condition is in a permissive alternative form in that it allows occupation of the dwelling by a named person **or** (and) a person employed locally in agriculture.
8. But in any event the Council was correct to conclude that there was no breach (either of Condition 3 subsection (a) or subsection (b)) until 27 December 2010. In these circumstances, in the light of the agreed chronology, a refusal of the LDC and the ensuing appeal was inevitable.
9. I therefore find that the Council's actions have not led the applicant to incur unnecessary or wasted expense in the appeal process and the application fails.

Sukie Tamplin

INSPECTOR