The Planning Inspectorate

Costs Decision

Site visit made on 7 October 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2019

Costs application in relation to Appeal Ref: APP/B1550/W/19/3233231
Land south side of, Ethel Road, Rayleigh, Essex SS6 8XH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs R Brooks for a full award of costs against Rochford District Council.
- The appeal was against the grant subject to conditions of planning permission for the erection of a building for use as overnight accommodation.

Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG[1] also states that local planning authorities are at risk of an award of costs if they impose unnecessary conditions.

3. The planning application submissions were ambiguous in referring to a 'leisure use' at the appeal site and using a somewhat curious description of the proposed development as a building for overnight accommodation, rather than a replacement dwelling. However, when read as a whole with reference to the floor plans, photographs and statutory declaration it should have been apparent that the appellants were making the case that the previous building was a dwelling due to the continuous occupation of the appeal building by Mr Messenger from around 1974 until 1997. The evidence suggests the caravan was incidental to the occupation of the appeal building, which had all the accommodation needed to function as an independent dwelling and was used in this way. Mrs Lee and the appellants continued the residential use, albeit at a lower intensity, until the building was replaced in 2016 by the current structure, which is also used as a holiday/second home.

4. In establishing whether a particular use is lawful an applicant does not need to prove matters 'beyond reasonable doubt' and their evidence does not need to be corroborated by 'independent' evidence to be accepted. Thus, if the Council has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason not to

[1] Paragraph: 049 Reference ID: 16-049-20140306

accept it. This should not however be interpreted as an unqualified requirement to accept the evidence presented. Instead, the evidence must be sufficiently precise and unambiguous, and should therefore be scrutinised accordingly.

5. In this respect, the Council apparently undertook an enforcement investigation that concluded that the previous building was used for primary residential purposes. A dwelling in other words. The delegated report also makes the point that aerial photographs support the statutory declaration and that the previous building was someone's primary residential address. The Officer's delegated report goes so far as to state that the use of the previous building as primary residential accommodation would have been found lawful if an application for a Lawful Development Certificate had been submitted prior to its demolition.

6. It is therefore difficult to understand why the Council then moved on to assess the appeal scheme primarily with reference to how the appellants' have used the appeal site, which is mainly for occasional overnight stays, family gatherings and short breaks. In doing so, it erroneously concluded that the use of the building was a leisure use rather than a continuation of its use as a dwelling, albeit in a less intense way. Such a use being similar to a second/holiday home.

7. This flawed approach resulted in the Council imposing an unnecessary condition, which sought to retain the appeal building for leisure use and prevent permanent occupation, even though permanent historic occupation of the building as a dwelling had already apparently been accepted by the Council. Thus, the imposition of a condition restricting the occupation of the building to a leisure use and not as a permanent dwelling was unnecessary and unreasonable. The appeal scheme effectively resulted in a replacement dwelling in the Green Belt with an improved standard of accommodation.

8. Accordingly, the appellant has been put to the unnecessary and wasted expense of submitting an appeal to remove a condition that should not have been imposed. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified

Costs Order

9. 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 Rochford District Council shall pay to Mr & Mrs R Brooks 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. The applicant is now invited to submit to the Rochford District 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.

Graham Chamberlain,
INSPECTOR