



Costs Decision

Site visit made on 13 July 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 4 August 2020

Costs application in relation to Appeal A: APP/F9498/C/19/3242096;

Appeal B: APP/F9498/C/19/3242097 and Appeal C

APP/F9498/X/19/3242095

Land at Four Acre, Broomstreet Lane, Oare, Somerset, TA24 8JR

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr D Druiff and Ms J Murray for a full award of costs against Exmoor National Park Authority.
 - The appeals are against an enforcement notice alleging the creation of a timber dwelling, shed, staircase, roof decking, etc and the refusal of a Lawful Development Certificate (LDC) for use of the site as a caravan site
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1. 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.

The Applicant's case

2. The applicant claims that the LPA were entirely aware of the situation that existed on site prior to the service of the enforcement notice and pursued a matter that had limited or no prospects of success. A Supporting Statement was lodged with the appeal and the LPA should therefore have been entirely aware of what was being advanced but continued nonetheless and despite warnings that had been given prior to the proceedings being commenced. The position is fundamentally flawed as the stairs and shed are not attached to the main caravan, were not at the time of the notice was served, or immediately before.
3. The LPA accepts that the main unit is within the dimensional requirements to fulfil the criteria of a caravan, it could therefore be retained on site. If it were the case that the caravan ceased to be so because of a physical relationship between the stairs and/or the shed, an alternative approach might have been to require their separation, the removal of the stairs or the storage shed and any other matters of concern. This is not what was done. Instead, the LPA have served a notice in circumstances where their concerns have been addressed and it is clear that the notice requires far more that would be necessary to remedy any breach of planning control. Additionally, the LPA took 70 weeks to determine the LDC application.
4. The costs of the appeal could have been avoided if a more measured approach had been taken.

The Authority's case

5. The Authority state that application was considered on its merits, including all the information submitted by the appellants and any other relevant information available to the Authority. Legal advice was sought. In respect of whether the structure is a caravan and whether site licence conditions apply.
6. The Authority's consideration of the LDC and the issuing of an enforcement notice for the reasons identified is proper and perfectly reasonable. In addition, the appellants agent was contacted to request clarification via a site meeting to enable the appellants to demonstrate how the unit is fixed together and how it is dismantled as the Authority were not convinced that the details submitted with the application demonstrated that the unit of accommodation meets the statutory definition of a caravan. The request for a site meeting was not facilitated by the appellants.
7. The Authority is not in receipt of the statement of case, that presumably, the appellants have submitted. In addition, the application form for costs completed by the appellants indicates that their final comments document sets out what they think is the 'unreasonable behaviour which has caused unnecessary or wasted expense in the appeal'. The Authority has not received this document and is therefore, unable to comprehensively respond to all potential points raised.
8. The Authority considers that the structure is a building, within the meaning of Section 336 and its use is as a dwellinghouse but is a matter clearly disputed by the appellant. The Authority has however, carefully considered the matter, taken its own legal advice and considered the arguments of the appellants. The consideration of the Authority has clearly been set out through the determination of the LDC application – that rationale, although clearly not accepted by the appellant, is reasonable and the Authority is justified in exercising its judgement and reaching the conclusions. This is both reasonable and appropriate.

Reasons

9. From the evidence before me the Authority has pursued enforcement investigations in a perfectly proper manner and sought legal advice on fundamental issues relating to the definition of a caravan and in assessing the structure. The appellants' case seems to dismiss their own actions involving the sawing through of the decking as a means of avoiding dispute with the Authority as being somewhat immaterial to the unauthorised development that has taken place. However, the Authority has pursued a case on the basis of their enforcement investigations of what had existed on site and the response of the Appellants' to the Planning Contravention Notice. Although a long period of time expired between the start of the investigation and the issue of the enforcement notice, enforcement action would have been suspended when the application for an LDC was made. Whilst the Authority's determination of this took an inordinate length of time, it was open to the applicants to appeal against non-determination.
10. Although I have reached different conclusions in my decision letter on certain matters to the Authority, their assessment of the status of the structure not falling within the definition of a caravan but constituting a building under s336

has been rationally and logically carried out. Whilst such assessments rely largely on the facts, there is always a degree of interpretation and judgement involved and case law has been referred to by both parties in support of their cases.

11. The appellants' lack of co-operation in respect of the Authority's request for a further site visit meant that the Authority was unable to confirm whether the shed was attached or not to the main structure. The Authority cannot be held to account for this. The applicant indicates that the Authority has had the opportunity to re-inspect the site but has not done so and further states that someone has been on site and removed part of the cladding as if to inspect it. What is implied by this is not clarified by the applicant.
12. The warning by the appellants to seek an award of costs should the Authority proceed to enforcement action is unhelpful and threatening. The officer report clearly shows how the Authority reached its decision through the application of the legal definitions and tests of caravans and buildings and why the decision was reached. The Authority has reasonably concluded that the structure is a building and as such it is unauthorised. The Authority is, therefore, entitled to carry out whatever enforcement action may be necessary and indeed has the responsibility for doing so, in the public interest (as advised in Paragraph 002 of the Planning Practice Guidance in relation to Enforcement and post-permission matters).
13. The appellants are critical of the Authority over the requirements of the notice being excessive. Although in my decision, I have substantially varied the requirements in a way that permits the structure to remain, in the expectation that it will come within the lawful use of the site, I am unaware of any negotiation between the parties on this point that may have overcome the need for the appeals. Indeed, if in accordance with the applicant's claim that the appellants have attempted to assist the Authority from the outset, this is not evident from the information before me.
14. I note the Authority's views in respect of the absence of a statement of case and other documents, and also the applicants' response. However I am satisfied that I have accessed all the relevant material submitted by the parties in respect of the appeals and this application for costs.

Conclusion

15. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Peter Jarratt

Inspector