



## Costs Decision

Site visit made on 28 July 2020

**by M Madge DipTP, MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19<sup>th</sup> August 2020**

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### **Costs application in relation to Appeal Ref: APP/V1505/X/19/3240737 Tresco, Church Road, Ramsden Bellhouse, Billericay CM11 1RT**

- 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 Mr M Hobson for a full award of costs against Basildon District Council.
  - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the erection of a single storey detached outbuilding in the rear garden of the property incorporating sauna, gym, games room and garden store.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (the PPG) 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.
3. The applicant argues that the Council failed to produce evidence to substantiate the reason for refusal as it did not produce an appeal statement. It is also claimed that the Council has also acted inconsistently as it has issued certificates for similar development proposals elsewhere. The applicant has been put to the additional and wasted expense of the appeal.
4. In response, the Council argues that there is no statutory requirement for a certificate application to be made and, in this case, it is only an option to determine whether a proposed development would be permitted development or not. The Council is also not obliged to submit an appeal statement and their delegated report and decision are adequate to understand the reasoning behind their decision.
5. The determination of a certificate application is based on factual evidence and the burden of proof rests with the applicant. This case relates to whether the provision of a domestic curtilage building would constitute permitted development as defined in Class E of the GPDO.
6. While Class E is specific in respect of its restrictions and conditional requirements, the courts have held that the decision maker must also have regard to whether the proposed use to which the building is to be put is genuinely and reasonably required relative to the use of the dwellinghouse. This amounts to a subjective assessment of the evidence and facts provided.

7. The Council's delegated report sets out a detailed assessment of the proposal against Class E and the subjective assessments introduced by case law. I find the Council's reasoning to be set out in a clear and concise manner. While the Council's conclusion differs from mine, that does not mean that the Council acted unreasonably.
8. The approach to decision making can change over time depending on the outcome of factors such as appeal and court decisions. In respect of the cases quoted as demonstrating the Council's inconsistent approach to decision making, the appeal decision referred to preceded the applicant's decision notice by a matter of weeks and the Council's approval of a similar certificate proposal post-dated the applicant's decision notice by over 7 months. I find it reasonable to conclude that rather demonstrating inconsistency, these cases demonstrate that the Council was in a period of transition, culminating in the application of the Inspector's approach in the Council's subsequent decisions on this issue.
9. Accordingly, I do not consider that the Council failed to substantiate their reason for refusal or that they acted inconsistently in reaching their decision. The appeal could not therefore have been avoided.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*M Madge*

INSPECTOR