



Costs Decision

Site visit made on 25 August 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Costs application in relation to Appeal Ref: APP/J1860/X/20/3251872 'Huntley's Lodge' at Huntley's Farm, Hancock's Lane, Little Malvern, Malvern, Worcestershire WR14 4JP

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs David Nixon for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for *'The chalet/log cabin style building is of a permanent fixed structure, known as 'Huntley's Lodge' located at Huntley's Farm; it has been used without interruption as a residential dwelling house since April 2014'*.
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Decision

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

Preliminary Matter

2. It is not clear from the information before me as to whether the applicants are seeking a full or partial award of costs. However, given the substance of the applicants' case I consider that it is highly likely that they are seeking a full award.

Reasons

3. The Planning Practice Guidance (PPG) advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the substance of the matter under appeal. It makes it clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour for both¹. The application was made in writing and therefore there is no need to rehearse the detailed points made.
5. The main thrust of the applicants' case is that the Council has not cooperated with and has misled them in relation to the determination of a previous application for an LDC and the submission and determination of the current

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

- LDC; the Council has misunderstood the reason for the LDC application and that the Council have failed to produce evidence to substantiate the reason for refusal and answer the analysis set out in the applicants' grounds of appeal.
6. It is apparent that a previous LDC application² was refused by the Council in 2019 (the previous LDC) and it appears that the site of the building, Huntley's Lodge, and its adjoining 'garden' area were included within the red line that was considered in that application. The applicants state that they were told that no issue could be seen with the application presented but that the previous LDC was refused. The applicants have also stated that on recommendation from the Council a further LDC application, the subject of the appeal before me, was submitted and subsequently refused.
 7. The applicants have not provided any evidence as to the exact nature of the advice and recommendations given by the Council that they consider misled them. Nevertheless, the Council has provided a copy of an email that was sent to the applicants' agent on the day the decision notice for the previous LDC was issued. I acknowledge that the email was sent on the day the decision notice was issued and ideally this could have been sent earlier within the application process. However, the Council, in that email, does apologise for not advising them earlier and it clearly explains the options that it considers the applicants may wish to contemplate taking. It also includes a short explanation as to why the previous LDC had been recommended for refusal.
 8. Whilst one of the highlighted options, in that email, is to reapply for the certificate with further information the issue of altering the size of the application site is not mentioned. Moreover, I have no evidence in relation to any other advice that may have been given by the Council in relation to the LDC applications. I understand the sense of frustration of receiving the email from the Council so late in the application process. However, I have no firm basis to conclude that the advice given was misleading so as to amount to unreasonable behaviour on the part of the Council. Moreover, it would not be reasonable to conclude that the Council had behaved unreasonably in the procedure leading up to the appeal on the basis of the information before me.
 9. The applicants consider that the Council has misunderstood the reason for their LDC application. I acknowledge that the Council's Officer Report states that the LDC application seeks a certificate for the '*continued use*' of Huntley's Lodge and that it indicates that the officer considers that the operational development is immune from enforcement action and that the building has been used as a dwellinghouse from day one. Nevertheless, the Council's reason for refusal states, amongst other things, that '*...the building.....has not been in residential use as a dwelling for a period of more than 10 years*'.
 10. I have found, within my decision relating to the LDC appeal, that based on the information contained within the application form that the application was made under section 191(1)(a) of the 1990 Act. Furthermore, I have determined the appeal on the basis that the existing use the LDC is requesting to be certified as lawful is the residential use of the log cabin, 'Huntley's Lodge'. The Council has stated within its response to the costs application that it believes the purpose of both of the LDC applications and the appeal is to establish the lawful use of the log cabin as a dwelling. As such, I do not

² Ref No: 19/00912/CLE

consider that the Council has misunderstood the reason for the LDC application.

11. I acknowledge that guidance on the Planning Portal states that for an existing use an appellant needs to show the proper evidence and that this could include proof that any use (or breach of condition) has been carried on continuously for a period of 10 years (four years in the case of a dwelling). However, this is only guidance and the time limits as contained at Section 171B are outlined in a previous paragraph in the section relating to LDC applications.
12. The Council submitted a statement of case to substantiate its reason for refusal and within that evidence it provided a response to the applicants' statement of case. I acknowledge that the Council has relied on the cited judgement³ and has not examined how the different sections of the 1990 Act are relevant to the case. However, the statement of case clearly substantiates the reason for refusal. As such, I do not consider that the Council's evidence which explained the reasons for the Council's stance was materially deficient in its reasoning.
13. In addition, although the facts of this case differ from those of that within the judgement, I do not believe that those differences are such that they undermine the matters of principle which can be derived from the obiter comments set out in that judgment. Furthermore, I have found that the time limit at section 171B (3) is relevant to this case, that there has been a material change in use of the land and that it has not been demonstrated that the existing residential use of Huntley's Lodge is immune from enforcement action.
14. Whilst, I appreciate that the outcome of the LDC application will have been a disappointment to the applicants, I have found that the Council's refusal to grant a certificate of lawful use or development in respect of the residential use of the log cabin, 'Huntley's Lodge' was well-founded. Consequently, I do not consider that the Council were unreasonable to refuse the LDC application and that its evidence substantiated its reason for refusal.

Conclusion

15. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, the application for an award of costs is hereby refused.

D. Boffin

INSPECTOR

³ Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15; [2011] JPL 1183