



Costs Decision

by Thomas Shields MA DipURP MRTPI

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

Decision date: 15 December 2020

Costs Application in relation to Appeal Ref: APP/Q1153/X/20/3250422 The Cookhouse, Higher Whiddon, Beaworthy, EX21 5AU

- 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 Stephen Hill against West Devon Borough Council for a full award of costs.
 - The application is in connection with an appeal against the Council's refusal of a certificate of lawful use or development (LDC) for use of a building as a dwelling.
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Decision

1. The application is refused.

Reasons

2. The application for costs and the arguments advanced for the applicant were set out in written submissions. As such, I need not repeat them in detail here.
3. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG lists some examples of behaviour whereby a procedural or substantive award of costs may be justified. The appellant seeks costs on substantive grounds.
4. The applicant states that the Council refused the application based on two facts: (1) that the appeal building shares services with the main dwelling and (2) that it has only been occupied by relatives of the applicant. However, the relevance of these two factors to the Council's reasoning was set out in more detail in their Refusal Notice, the Council officer's delegated report, and submitted appeal statement.
5. It is important to note that while the Council may have expressed their views that the appeal building was more likely to be in use as a residential annex with shared services, the onus on providing proof of lawfulness, tested on the balance of probabilities, rests with the applicant/appellant².
6. Notwithstanding the ambiguity in the appellant's submissions concerning the provision of utility services³, this was only one of a number of factors which the Council referred to in deciding that the claimed lawfulness had not been demonstrated. Overall, they were not convinced that the appellant's evidence

¹ Paragraph 030 ref 16-030-20140306

² Planning Practice Guidance Reference ID: 17c-006-20140306 (MHCLG)

³ See Appeal Decision paragraph 13

sufficiently demonstrated that a new separate planning unit had been created, and that the use of the appeal building for residential accommodation had resulted in development⁴ resulting from a material change of use. For the reasons set out in detail in the appeal Decision in respect of a lack of clarity in terms of identifying past and current primary uses and planning units, I came to the same conclusion. As such, it failed to demonstrate, on the balance of probability, that the claimed use as a single dwellinghouse is lawful.

7. For all these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Thomas Shields

INSPECTOR

⁴ Section 55 Town and Country Planning Act