



Costs Decision

Hearing Held on 26 January 2021

Site visit made on 27 January 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2021

Costs application in relation to Appeal Ref: APP/M2325/X/19/3242331 25A North Clifton Street, Lytham St Annes FY8 5HW

- 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 Mrs L Simkin of Freezewell Ltd for a full award of costs against Fylde Borough Council.
 - The hearing was in connection with an appeal against the refusal of a certificate of lawful use or development for residential use of the maisonette and ancillary first floor roof terrace.
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Decision

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

The submissions for Mrs L Simkin of Freezewell Ltd

2. The appellant argues that the Council has acted unreasonably in that they failed to apply the correct definitions of 'dwellinghouse' and 'planning unit', which resulted in the application of the wrong immunity period being applied. Furthermore, the Council failed to have proper regard to the submitted evidence, failed to correctly apply the 'balance of probability' test, showed bias in giving weight to an alleged absence of evidence and failed to justify its reason for refusal.
3. In addition, the applicant claims that the Council's cost rebuttal demonstrates how they were unduly influenced by the alleged impact of the development on the neighbouring occupiers' residential amenity. This led to factual evidence being misrepresented and/or disregarded. The applicant has therefore been put to the additional and wasted expense of the appeal.

The response by Fylde Borough Council

4. The Council argues that, in LDC applications and appeals, the burden of proof rests with the applicant/appellant. The alleged failings of the Council raised by the applicant relate to areas of disagreement between the parties and these have been addressed in the written submissions and contributions to the hearing. It is the quality of evidence, and not the quantity, that is the determining factor when applying the balance of probability test.
5. The Council has coherently and consistently applied the definition of dwellinghouse set out in the GPDO¹ and DMPO². While the maisonette is located within a building, the roof terrace falls outside that building. As such

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)

the use of the roof terrace cannot form part of the maisonette's planning unit and the 10 year period is applicable.

Reasons

6. The Planning Practice Guide ("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.
7. The PPG provides a list of behaviours which, while not exhaustive, may give rise to a substantive award against the Council. The list includes 'providing information that is shown to be manifestly inaccurate or untrue', which succinctly sums up the applicant's assertions relating to the Council's assessment and interpretation of the evidence submitted with the LDC application.
8. There was no dispute that the residential use of the maisonette was immune from enforcement action. The dispute relates to when the use of the 'ancillary roof terrace' first occurred and what period of immunity should be applied.
9. The definition of 'dwellinghouse' made no significant contribution to the determination of the appeal. While the extent of the 'planning unit' could have had a bearing on the period of immunity, the evidence provided with the appeal demonstrates that the 'roof terrace' was brought into use after the maisonette was occupied for residential purposes. As such, I found that the extent of the maisonette's planning unit had been enlarged to encompass the 'roof terrace'. The Council correctly identified the immunity period.
10. The Council provided clear and concise reasoning for their decision. While I have not agreed with that reasoning, it left the appellant in no doubt as to why the Council refused to issue an LDC.
11. The Council's rebuttal sets out how they continued to work with the appellant to find a solution, which included the suggestion that an application be made to regularise the development. An integral part of that application is suggested to be the provision of screening to provide neighbours a degree of privacy. I found no suggestion within the Council's appeal documentation or evidence given at the Hearing that their decision on the LDC was influenced by planning merits.
12. I find the Council's case to be clearly set out and their position has remained consistent throughout the appeal period.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guide, has not been demonstrated.