



Costs Decisions

Virtual Hearing Held on 17 February 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2021

Costs application in relation to Appeal Ref: APP/V2255/X/20/3249583 The Tweeds, Highsted Valley ME9 0AD

- 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).
 - Application A is made by Swale Borough Council for a full award of costs against Mr and Mrs Willis.
 - Application B is made by Mr and Mrs Willis for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for a summerhouse and greenhouse.
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Decisions

Application A

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

Application B

2. The application for an award of costs is dismissed.

Application context

3. During the course of this appeal a full application for costs was made by the Council against the appellant (Application A). At the Hearing a further application for a full award of costs was made by the appellant against the Council (Application B).
4. Parties in planning appeals and other planning proceedings are normally expected to meet their own expenses. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may 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.

Reasons

Application A

5. It is the Council's case, that having explained the legal reasons for refusing the certificate application, it was unreasonable for the appellant to appeal the decision, and this has led to unnecessary expense in defending their decision.

6. The appellant has the right to pursue an appeal against the decision of the Council. Moreover, they have produced evidence prior to, and at the Hearing to support their stance.
7. The difference of opinion over the extent of the curtilage is a fact and degree judgement, and it will be seen from my decision that having listened to and considered all of the available evidence I have agreed with the appellant in this regard. The appeal has succeeded, and a Certificate has been granted.
8. It therefore follows, that I cannot agree that the appellant has acted unreasonably, and their decision to appeal the Council's decision has resulted in unnecessary or wasted expense in the appeal process.

Application B

9. In summary, the case for the appellant is that the Council has failed to substantiate their case. Broadly speaking they consider that the Council failed to objectively engage with the evidence pertaining to the physical layout, ownership and the function of the land over time, in order to establish the extent of the curtilage of the dwelling. It is submitted that the Council relied upon subjective criteria and guesswork.
10. The distinction between the way the land has been used over time and its curtilage, were discussed at the Hearing. The Council accepted that the land has been used as garden for over 10 years and this led to the grant of application 19/503434/LDCEX. However, whether it also formed part of the curtilage of the dwelling remained an area of dispute.
11. It is clear from the Officer reports for this, and the previous application, that the evidence provided by the appellant was considered as part of their overall assessment, although they did not find in the appellant's favour.
12. Nevertheless, at the appeal the Council produced evidence to support their position, with officer reports for the previous certificate applications and plans submitted from two previous planning applications in 2010 and 2016, where the boundaries of the site were marked in different ways. Their evidence went on to consider the spatial characteristics of the site, and the physical differences between the appeal site and the neighbouring properties, which I accept can be relevant to the question of the curtilage.
13. There is no authoritative definition of the term curtilage, and it is a matter of fact and degree, dependant on the circumstances of the case and primarily a matter for the decision maker. Having considered all of the available evidence, it will be seen that I concluded that, on the balance of probability, the claimed land, forms part of the curtilage of The Tweeds. Consequently, at the time of the application, the development applied for would have been lawful. Nonetheless, I do not consider that the Council failed to properly evaluate the application, albeit that they came to a different decision.
14. Accordingly, I cannot agree that the Council acted unreasonably and their decision to refuse the Certificate has caused any party to incur unnecessary or wasted expenses.

Conclusion

Application A

15. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated in this instance. Accordingly, I refuse the application for an award of costs against the appellant.

Application B

16. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated in this instance. Accordingly, I refuse the application for an award of costs against the Council.

Hilary Orr

INSPECTOR