
Costs Decision

Site visit made on 10 June 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Costs application in relation to Appeal Ref: APP/Y3615/X/20/3253830 Oakmead Farm, Ockham Lane, Cobham KT11 1LY

- 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 Allen for a full award of costs against Guildford Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use of land for ancillary residential purposes to the main dwelling.
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Decision: the application is refused

Reasons

1. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include failure to produce evidence to substantiate each reason for refusal on appeal.
2. The application for costs does not directly reference the advice in the Planning Practice Guidance. Nevertheless, the essence of the applicant's claim for costs is that the Council had sufficient enough evidence in order to grant a certificate of lawful use of the land for residential purposes. The applicant considers that, weighing the submitted evidence collectively and with no counter evidence presented against by either the Council or objectors, the threshold of balance of probability has been met. The applicant also considers that the Council set a significantly high bar for the application that was more in keeping with the higher standard of proof of beyond reasonable doubt that is applicable to criminal law. The applicant considers that the Council acted unreasonably in refusing the application for a certificate of lawful use and that the applicant has been put to unnecessary expense of submitting the appeal owing to the certificate of lawful use or development not being granted by the Council.
3. The Planning Practice Guidance advises that costs cannot be claimed for the period during the determination of the planning application. However, the Planning Practice Guidance goes on to confirm that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in

the Inspector's consideration of whether or not costs should be awarded. I will approach this application for costs on that basis.

4. My starting point is the Officer's Report for the application. On my reading, there is absolutely nothing in that report to suggest that the Council applied the higher standard of proof of beyond reasonable doubt that is applicable to criminal law. Indeed, under the heading 'Planning considerations', the report specifically mentions the correct test of balance of probabilities. It does so again in the last paragraph of the section headed 'Analysis and conclusion'. I am therefore satisfied that the Council did apply the correct test when determining the application.
5. Furthermore, it is clear from the Officer's Report that the Council followed the relevant case law in reaching its decision. The explanation in that Report that the evidence submitted with the application was insufficient and not precise enough for the Council to conclude that, on the balance of probabilities, such a use had subsisted for a period of 10 years was entirely consistent with the relevant case law. In that respect, the Courts have held that, even if the Council has no evidence of its own to contradict that of the appellant or make his version of events less than probable, the appellant's evidence must still be sufficiently precise and unambiguous if it is to be accepted¹.
6. Turning then to the appellant's evidence, that evidence fell short, by a considerable margin, of being sufficiently precise and unambiguous for it to make out his case. Of the two Statutory Declarations provided, that from the applicant/appellant covered only the latter half of the relevant ten-year period. The other was short in detail. None of the aerial photographs were taken within the relevant ten-year period. None of the photographs taken at ground level were dated at all and, whilst it was reasonable to conclude that they were taken following occupation of Oakmead Farm by the applicant/appellant in June 2015, at best that means that they covered only the latter half of the relevant ten-year period. The Land Registry document was provided in part only and with no supporting explanation, such that its evidential value was extremely limited. Similarly, documents relating to various planning applications were provided in part only, such that the parts that were provided could not be placed into context and were again of limited evidential value.
7. In summary, rather than meeting the threshold of balance of probability, when that test was applied I found that the applicant/appellant's evidence failed to show that the use claimed use had taken place continuously throughout the relevant ten-year period. Indeed, in my view, the case was not even finely balanced: the appeal had no prospect of succeeding on the evidence submitted.
8. Moreover, contrary to the applicant's assertion, this was not a situation in which the Council had no evidence of its own to contradict that of the applicant/appellant or make his version of events less than probable. In fact, it was the Council that provided the only aerial photographs taken during the relevant ten-year period. Those aerial photographs, taken in 2012 and 2018, were further evidence leading to my conclusion that the claimed use had not subsisted throughout the relevant ten-year period.

¹ *Gabbitt v SSE & Newham BC* [1985] JPL 630

9. In conclusion, I have taken into account the actions of the Council both at the time of the planning application and during the appeal process. I find that the Council did not act unreasonably at either of those times. It follows that, in the absence of any unreasonable behaviour on the part of the Council, an award of costs in favour the applicant is not justified.

Paul Freer

INSPECTOR