
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: 25 June 2021

Costs application in relation to Appeal Ref: APP/M3645/X/19/3235886 Greengables, Ricketts Hill Road, Tatsfield, Westerham TN16 2NB

- 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 and Mrs Des Harriott Gayle for a full award of costs against Tandridge District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use of the ground floor annex for bed and breakfast accommodation.
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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 acting contrary to, or not following, well-established case law; failure to produce evidence to substantiate each reason for refusal on appeal; not reviewing their case promptly following the lodging of an appeal; preventing or delaying development which should clearly be permitted; and vague, generalised or inaccurate assertions about a proposal.
2. The applicant's claim for costs encompasses aspects of all the behaviours identified above. However, in essence, the applicant's complaint is that the Council failed to grapple with what the proposal scoped in either factual or planning law terms. I will consider the application on those terms, whilst at the same time being mindful of the behaviours identified in the Planning Practice which may result in an award of costs against a local planning authority.
3. Section 195(2) of the 1990 Act refers to the 'refusal' of a certificate of lawful use or development being not well-founded. This means the decision of the local planning authority, not the reasons for that decision. Nevertheless, it is helpful in the first instance to set out in full the reason for the refusal of certificate of lawful use or development applied for. This is stated on the Council's formal Decision Notice as:

The use of the outbuilding for and bed and breakfast (C1) use is considered to constitute a material change of use and would form a separate planning unit to the main dwelling. The use is not therefore, lawful under Section 55(2) of the Town and Country Planning Act 1990 (emphasis added).

4. It is evident that from this reason that the Council considered that the proposed use would not be lawful on two grounds: 1) it would constitute a material change of use and 2) would form a separate planning unit to the main dwelling. It is convenient to consider the second ground in the first instance.
5. The Officer Report clearly acknowledges that the cooker previously located on the ground floor annex had been removed and that breakfasts were provided by the occupiers of the main house. I recognise that the Council did not expressly take into account the applicant's indication that the proposed use would only operate on an intermittent basis. However, for the reasons set out in my Decision, I consider that it was correct not to do so. It is therefore apparent that the Council had considered the application on the correct facts and on the correct basis.
6. The Officer Report goes on to reach the conclusion that the entire annex would be in use as bed and breakfast, and would be able to continue to function separately from the main house. The Officer Report concludes on that basis a separate planning unit would be created. In reaching that conclusion, the Officer Report does not specifically refer to the relevant case law. But it does nonetheless apply some of the principles emerging from that case law, including the concept of physical separation and the relationship between primary and ancillary uses. Although I ultimately took a different view to the Council on the same set of facts, the Council was perfectly entitled to reach the conclusion that it did. I make no criticism of the Council for that.
7. In relation to the first ground, that the proposed use would constitute a material change of use, the Council does appear to have initially approached the matter incorrectly, insofar as the Officer Report appears to suggest that a material change of use has arisen through the creation of a separate planning unit. On my reading, that constitutes an incorrect application of the relevant case law which, in summary, indicates that a new planning unit may be created by the introduction of a use that is physically and/or functionally separate within a planning unit as a single unit of occupation. In other words, the opposite cause/effect relationship to that stated by the Council.
8. The salient point, though, is that the Council's formal Decision Notice clearly states that the proposed use would constitute a material change of use. The applicants would therefore have been aware from the outset in submitting their appeal that they would need to address the question of a material change of use and whether any such material change of use led to the creation of new planning unit.
9. The Council's Written Statement submitted in response to the appeal adopts a different approach based upon the nature and character of the intended occupancy. The case then put is that the proposed use would not have the characteristics of a single dwelling use class and would point to a non-incidental or ancillary use. It is not entirely clear from the Officer Report whether that test was being applied to the planning unit as a whole, but in essence the approach was the correct one and in accordance with settled case law.

10. Having regard to the above, I find that the Council did not make vague, generalised or inaccurate assertions about the proposed use. Although the Council's case could perhaps have been more clearly stated, I find that it did not act contrary to well-established case law. The Council did produce evidence to substantiate the reason for refusal and, by correcting the previously mistaken approach taken at the earliest opportunity through its Written Statement, patently did review its case promptly following the lodging of an appeal.
11. Overarching all the above is the reference in Section 195(2) of the 1990 Act to the 'refusal' of a certificate of lawful use or development being not well-founded. Whatever lack of clarity there may have been in the Council's case, and even though the Council's reason for refusal was misplaced in some respects, I ultimately found the Council's decision to be well founded. It therefore follows that, in refusing the LDC, the Council did not prevent or delay development which should clearly be permitted.
12. In conclusion, I find that the Council did not act unreasonably in the terms set out the Planning Practice Guidance. The latter clearly states that 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 first of those conditions have not been met in this case, such that an award of costs is not justified.

Paul Freer

INSPECTOR