



Costs Decision

Site visit made on 8 June 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2021

Costs application in relation to Appeal Ref: APP/T3725/X/21/3266375 12 Warmington Grove, Warwick CV34 5RZ

- 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 Darcy Craven for a full award of costs against Warwick District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the proposed siting of a mobile home/caravan for incidental/ancillary residential use.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Paragraph 030 of the Appeals section of the national Planning Practice Guidance (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.
3. The application sought a Lawful Development Certificate (LDC) for the proposed use of a mobile home for ancillary residential use. The costs application is made on the basis that the applicants (referred to now on as "the appellants") consider the Council to have based its decision on how it believed the proposed mobile home 'could potentially' have been used. The Council took the view that due to the lack of the requisite interdependency between the occupier of the mobile home and the main dwelling, the mobile home would not be ancillary and would constitute a change of use which would require planning permission.
4. As set out in my Appeal Decision, the LDC to site a mobile home within the garden was for residential occupation by Mr Craven's Godfather who has a long and close family bond with the appellants. The unit would provide facilities to allow it to be self-contained, but it would be used as ancillary accommodation to the main dwellinghouse. The appellants consider the Council acted unreasonably by steadfastly maintaining that the proposed use was not incidental/ancillary to the enjoyment of the dwellinghouse and giving precedence to the capability of the mobile home for independent occupation over its stated intended use. It relied on the perceived capability of the mobile home to be occupied independently from the main dwellinghouse. This was because the Council considered that the mobile home could exist without

- reliance on the main dwellinghouse and that it lacked both the functional and physical relationship with the main dwellinghouse.
5. To reinforce this view, the Council noted the mobile home would include all the facilities necessary for a self-contained dwelling but acknowledged that this was not sufficient in itself to say the unit would not be ancillary. Reference was made to *Uttlesford*¹ where it was established that a self-contained annexe can still be ancillary to the main house. The Council's view remained that the appellants' case differed markedly from *Uttlesford* because there the occupant was totally reliant on the occupants of the main house and the evidence clearly showed this to be the case.
 6. However, in *Uttlesford*, the Court held that the Inspector had been correct in concluding that the garage with living accommodation would remain part of the same planning unit as the dwellinghouse and that there was, accordingly, no material change of use. Also, there was no reason in law why self-contained accommodation, to enable an elderly relative to be independent of the family, should become a separate planning unit from the main dwelling.
 7. In the LDC appeal, the appellants were clear in explaining that an ancillary use was sought with reliance placed on the main house for care and assistance. The intended manner of occupation was described along with details of the facilities to be shared with the main house. The combination of factors pointed clearly towards a use that would comprise additional living accommodation without creating a separate planning unit.
 8. The Council maintained the evidence submitted was not sufficiently precise or unambiguous to indicate that there would be an immediate need for full care by the appellants nor had it been fully demonstrated why the intended occupant would not be fully capable of looking after himself, and thereby using the mobile home as a separate dwelling. Furthermore, due to the positioning of the mobile home, "at the far end of an unusually long garden" this was considered to limit the physical relationship between the house and mobile home which added further weight to the argument that the occupation would not be ancillary.
 9. That was the wrong approach which neglected to understand that an LDC can only be issued for what is actually applied for.
 10. The Council provided the appellants with a dismissed appeal decision² for an LDC which they considered to be similar. In that decision, the Inspector found that it had not been fully demonstrated where the prospective occupants lived or why they were unable to care for each other without relying on the functionality of the appellant's main dwelling. On the basis of this decision, the Council requested further information to support the functional relationship between the proposed occupant and the household and details why he cannot live independently. The appellants responded with further information in the form of a lengthy personal statement from Mr Edwards detailing his 35 year involvement with the family and his more recent health issues. This was provided in addition to the agent's comprehensive planning statement which already provided information relating to how the mobile was going to be used.

¹ Uttlesford DC v SSE & White [1992] JPL 171

² APP/T3725/X/18/3218332

11. Having decided that the mobile home would enable some independence, the Council concluded it would not be ancillary and the conclusion was drawn that it would be functionally and physically separate from the main dwellinghouse. This was seemingly done without grasping key points raised in the appellants' submission which included reference to Appeal Decisions³ where LDC's were granted for uses of caravans which were found to form part of the primary residential use of land and thus did not amount to a material change of use.
12. Despite being aware of these decisions and having regard to established case law in *Uttlesford*, the Council failed to establish whether the actual use of the mobile home, rather than any perceived or potential use, would form part of the primary use of the land. Even where circumstances differed in the Appeal Decisions, these still provided a steer on the principles to apply.
13. The Council remained resolute that its stance was correct. I am satisfied that the Council did not follow well-established case law and that was unreasonable, and in doing so lead to the appellants incurring wasted expense in appealing the Council's reason for refusing the LDC. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Warwick District Council shall pay to Mr and Mrs Darcy Craven, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Warwick District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

SA Hanson

INSPECTOR

³ APP/K3605/X/12/2181651, APP/L5810/X/15/3140569, APP/C1950/X/19/3247983, APP/Y0435/X/15/3129568