



Costs Decision

Site visit made on 9 June 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2021

Costs application in relation to Appeal Ref: APP/J1915/X/21/3269842 5 Mayflower Close, Hertingfordbury, Hertford SG14 2LH

- 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 J Havard for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for Use of the land to the east of the existing dwelling house as residential garden land.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that 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.
3. Paragraph 047 of the PPG states that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. Examples of unreasonable behaviour include a lack of co-operation with the other parties.
4. Paragraph 048 of the PPG advises, in relation to enforcement proceedings, that local planning authorities must carry out adequate prior investigation, and are at risk of an award of costs if a more diligent approach could have avoided the need for an appeal. Reference is made elsewhere to the supply of relevant information at the appeal stage that could have been provided at the application stage as being unreasonable.
5. Paragraph 049 of the PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. It sets out that examples of unreasonable behaviour include a failure to produce evidence to substantiate refusal reasons and failing to follow well established case law.
6. The appellant's case is that the Council has failed to be transparent about and substantiate the reasons for the application being refused; has misrepresented the extent and quality of its evidence; has failed to supply when requested to do so alleged contradictory information used, and has applied insufficient

¹ Reference ID: 16-030-20140306

- weight to the various sworn statements provided. It says that based on the balance of probability the Council should have approved the certificate of lawfulness.
7. The key advice regarding the determination of this type of application is set out within national planning practice guidance. This states that *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."*²
 8. The Council set out in its officer report that from the various information available including its own records, plans and aerial photographs, it considered only a small portion of the site (within the central area) to have been used continuously as part of the garden for the requisite immunity period. The report referred to this conclusion being based on evidence of structures, activity and formal elements of landscaping.
 9. The appellant has referred to the extent of the Council's evidence being misrepresented. Whilst, with the exception of aerial photographs, the Council did not explicitly set out the historic records on which its judgement was based, this appears to have been implied through reference to knowledge about the historic use of the site not being for garden purposes, but rather as agricultural land. I am not therefore persuaded that the Council has acted unreasonably in terms of misrepresenting evidence.
 10. Although the Council did not provide an appeal statement, it seems to me that it was entitled to rely on its officer report assessment. The various information provided in support of the application, including sworn statements, was acknowledged, however the Council concluded that this was insufficient to demonstrate continuous use across all of the land in question. I am not persuaded that this finding is consistent with the suggestion that the appellant has been accused of providing untruthful information.
 11. As set out in the main decision, I did not concur with this assessment and by contrast gave significant weight to the sworn statements provided. However the Council's interpretation was a matter of judgement and although the appellant suggests that a finding in favour of the application should have been inevitable, I am not persuaded that the position was incontrovertible. Indeed I referred in my decision to the information provided not being as detailed as it could have been regarding the historic use of specific parts of the site.
 12. Notwithstanding this, a difference in judgement about the precision and ambiguity of the evidence does not amount to unreasonable behaviour. Nor am I persuaded from the representations that the Council's judgement with regard to continuous use would fail to follow established case law.
 13. It is unclear why the Council was seemingly reluctant to disclose the information on which its decision was based. However, had it been more transparent about this information earlier in the process and had it engaged in more detailed dialogue with the appellant, I am still not persuaded that this

² Reference ID: 17c-006-20140306

would inevitably have led to the Council's concerns being overcome, thereby resulting in a favourable decision and the avoidance of the appeal process.

14. I am not certain what the Council meant by referring to a lack of evidence of 'progressive' use. However even if this questionable term had not been used, it seems to me that the substance of the Council's decision would have remained unaltered.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR