
Costs Decision

Site visit made on 15 June 2021

by **Mark Harbottle BSc MRTPI**

Decision date: 13 July 2021

Costs application in relation to Appeal Ref: APP/K0235/X/21/3270734 The Lodge, Staploe, St. Neots PE19 5JB

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Frank Squire for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for occupation of the Coach House as an annex.
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Decision

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

The submissions for Mr Frank Squire

2. The Council acted unreasonably because it:
 - Wrongly applied section 55(3)(a) of the Act, which relates to the change of use of a building used as a single dwellinghouse to use as two or more separate dwellinghouses.
 - Failed to follow well-established case law, and thus made a very simplistic conclusion that the appeal proposal would be tantamount to creating a new dwelling.
 - Relied on irrelevant case law and failed to correctly grapple with the relevant matters relating to the identification of the planning unit and material change of use.
 - Relied on appeal decisions that relate to planning merits, contrary to clear advice within the Planning Practice Guidance (the PPG).
3. The applicant raised these issues in correspondence with the Council but to no avail.

The response by Bedford Borough Council

4. The Council accepts that section 55(3)(a) of the Act does not relate to the subdivision of land, as in this case. However, it does not agree that the conclusions it reached were unreasonable or that its decision not to issue a certificate was irrational. It reached its view that the annex would result in the creation of a new dwellinghouse having regard to other relevant precedents.

Reasons

5. The PPG advises that costs may be awarded if a party has behaved unreasonably, and so has directly caused another party to incur unnecessary or wasted expense in the appeal process.
6. While the Council wrongly cited section 55(3) of the Act it did address the central concern of the case law cited by the applicant, namely whether or not the annex would be ancillary to The Lodge or result in there being a second dwellinghouse on the site. While the report that informed the Council's decision did not define the planning unit, it clearly viewed the Coach House as currently forming part of a single dwellinghouse use and was equally clear in expressing the view that the annex would be a second dwellinghouse. It therefore described the formation of a new planning unit even if it did not use the words.
7. The applicant had referred to the *Burdle* and *Uttlesford* cases¹ in his application statement and these were not mentioned in the officer report. However, it did identify matters pertinent to the identification of the planning unit and the planning status of the annex in terms of functionality and separation distance.
8. The Council was confused about the nature of what it described as *Bassett v West Devon BC* and *Cheatham v East Hertfordshire District Council*. As the applicant identifies, these were appeal decisions², not court cases. Nevertheless, appeal decisions can be relevant considerations, and, like this appeal, both involved the use of outbuildings sited a significant distance from the dwellinghouse. While one of those appeals followed a refusal of planning permission, it included a central factual matter of whether the proposed annex would have a clear functional link to the main dwelling, as in this appeal.
9. In view of the foregoing, while I appreciate the applicant's frustration that the Council declined further discussion, it has not been demonstrated that it needed to reconsider its assessment that the annex would function as a separate dwellinghouse. Accordingly, I do not see how the appeal could have been avoided.

Conclusion

10. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mark Harbottle

INSPECTOR

¹ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207 and *Uttlesford DC v SSE & White* [1992] JPL 171

² APP/Q1153/03/1118941, dismissed 9 December 2003, and APP/J1915/D/19/3232061, dismissed 27 August 2019