
Costs Decision

Site visit made on 13 October 2021

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 October 2021

Costs application in relation to Appeal Ref: APP/V1260/X/21/3276044 Land at Fripps Cottage, Ashington Lane, Wimbourne, Dorset, BH21 3DG

- 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 Mrs H Edbrooke for a full award of costs against Bournemouth, Poole and Christchurch Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the use of land as domestic garden land associated with Fripps Cottage
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Decision

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

Reasons

2. The Planning Practice Guidance 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 appellant states that the Council failed to apply the tests set out in *Gabbittas*; gave too much weight to previous objections no longer relevant; failed to give weight to the appellant's evidence; that they were fixated on the 'curtilage' argument; and that it was accepted that the land had not been in agricultural use. In short, the appellant disagrees with how the decision was made and the Council has not interpreted the evidence correctly.
4. The interpretation of evidence and the weight to be attached to it is a matter for the decision maker having regard to relevant caselaw. *Gabbittas*¹ indicates that an appellant's evidence should not be rejected simply because it is not corroborated and if there is no evidence to contradict their version of events, or make it less than probable, and the evidence is sufficiently precise and unambiguous, it should be accepted.
5. The case officer's report is clearly written and addresses each piece of evidence in turn, attaches different weight to each and refers to another appeal decision in explanation. The officer has had regard to the planning history of the appeal site and associated land. Reference is made to the residential curtilage of Fripps Cottage including a parking area, which is a statement of fact but forms no part of the reasons why the Council refused the LDC.

¹ *Gabbittas v SSE & Newham LBC* [1985] JPL 630

6. The Council acknowledges that the site may not now be in active agricultural use but the appellant places great weight on this point in seeking to justify the assumption that the site must therefore be in use as a domestic garden. The Council is perfectly entitled to conclude that this simplistic approach does not prove the land is residential garden.
7. I am satisfied that the Council has followed the correct procedures in determining the application, they have considered and weighed up the available evidence either submitted with the application or available to them through the site history and reached a decision based on the balance of probability.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Peter Jarratt

Inspector