



Costs Decision

Site visit made on 19 October 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10/11/2021

Costs application in relation to Appeal Ref: APP/N4720/X/21/3274993 Briaden, Underwood Drive, Rawdon, Leeds LS19 6LA

- 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 Kilmartin for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the use of part of adjoining field as garden to dwellinghouse.
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Decision

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

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs can only be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant makes a substantive claim that the Council failed to attribute an appropriate amount of weight to sworn evidence in support of the LDC, instead giving undue weight to the land's appearance during 3 officer site visits. Furthermore, the applicant claims the Council failed to review their decision upon receipt of the appeal.
4. The Council rebuts the applicant's claims, asserting that aerial imagery supported their stance and that the 3 site visits demonstrated due diligence on their part. In the Council's opinion, all evidence was reasonably considered as evidenced in their delegate report.
5. The decision on this appeal turned on the extent and use of the planning unit. The Council accepted, in their delegated report, that the activities to which the land was put, following its purchase, were residential in nature. The Council also accepted that the land had been purchased by the owner of Briaden and fenced off from the field in approximately 2003, which is more than 10 years before the material date.
6. The Council failed to consider what effect the land purchase and fencing had in terms of the extent of the planning unit and its residential use. Had the planning unit been properly considered, rather than relying on the visual appearance of the land, the appellant's evidence would have been found, on the balance of probability, to be precise and unambiguous. A certificate would have been granted and the appeal would not have been necessary.

7. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

8. 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 Leeds City Council shall pay to Mr J Kilmartin, 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.
9. The applicant is now invited to submit to Leeds City 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.

M Madge

INSPECTOR