



Costs Decision

Inquiry Held on 16 November 2021

Site visit made on 16 November 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2021

Costs application in relation to Appeal Ref: APP/X1545/X/20/3263594 Ringdoves, Goldsands Road, Southminster CM0 7JR

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Litscher for a full award of costs against Maldon District Council.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for the stationing of a mobile home for use ancillary to the residential dwelling.
-

Decision

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

Procedural Matters

2. The applicant submitted his case in writing before the inquiry and so there is no need to repeat it here in full.
3. The Council withdrew its costs claim in writing during the inquiry. I have therefore not considered it further.

Reasons

4. The 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. Awards against a local planning authority may be either procedural or substantive.
5. The applicant is seeking a full award of costs on the basis that the Council behaved unreasonably with respect to the substance of the matter under appeal. The main thrust of the applicant's case is that the Council failed to assess the Lawful Development Certificate (LDC) application on the correct basis by considering it as a single dwellinghouse, applying the wrong immunity period, incorrectly assessing the residential curtilage, conjecture about the independent occupation of the mobile home and by applying the wrong standard of proof.
6. The officer report describes the proposal as 'for the existing use of a building as a separate dwelling'. Although, from this wording, it would appear that the Council has considered the application on the wrong basis, it is clear from the remainder of the report, that the Council has actually considered whether the mobile home is a caravan and how it has been occupied.

7. The officer report also appears to conflate operational development and material change of use without explicitly concluding it considers the mobile home is a building. The Council has, however, provided clarity in this regard through the appeal and makes it clear it considers, due to the addition of certain works, the mobile home should be considered a building for the purposes of the Act.
8. As set out in the Appeal Decision, whether the modified mobile home is a building or a caravan is a matter of fact and degree. Indeed, within the applicant's own appeal statement, he states that '*operational development has occurred resulting in a change of use of the land*'. While the applicant has since confirmed he considers the mobile home is a caravan, such inconsistency highlights that such a matter is not straightforward.
9. The Council set out its reasons for considering why the mobile home is not a caravan within the officer report. Whilst I have disagreed with the Council on this point, I do not believe it was unreasonable in taking a contrary view. Had I found the mobile home to be a building, although the applicant did not wish the decking and porch to be considered, it would have been necessary to consider the implications of such development.
10. From the officer report, it appears that the Council considered the application in terms of whether or not the mobile home was within the curtilage of the dwellinghouse and not whether it was within the same planning unit. I find the officer report is slightly ambiguous in this regard.
11. Its conclusion that the mobile home would not be used ancillary to the main dwelling, due to its location outside of the residential curtilage, is incorrect. An ancillary residential use does not need to be confined to the curtilage of a dwellinghouse. Nevertheless, the Council made it clear through the appeal, that it considers a new planning unit has been created and has set out clear reasons for its position.
12. Whether a new planning unit has been created is a matter of fact and degree. Although I have found that a new planning unit has not been created in this case, given the complexities involved, I do not consider the Council was unreasonable in drawing a different conclusion.
13. The Council considered the proposal under the 4 year rule, on the basis that section 171B(2) was relevant, which states where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
14. The Council's case is predicated, however, on the basis that the addition of the porch resulted in the creation of a building. In such a circumstance, there would have been no change of use of a building and so section 171B(2) would not apply. While this meant that the Council considered an immunity period of 4 years rather than 10, since it is less than 10 years, the applicant was not disadvantaged by this. The appeal would still have been necessary and so it has not resulted in wasted expense.
15. The standard of proof in an LDC is the civil standard, which is the 'balance of probabilities', not the criminal standard, which is 'beyond reasonable doubt'. The Council has made reference to the latter in its officer report and statement

of case, which points towards the Council applying the wrong standard, which would be unreasonable. However, the Council has made specific reference to the standard being 'on the balance of probability' elsewhere in its officer report and decision notice, and taking the report and decision together, I am satisfied that the Council applied the correct standard when it considered the application.

16. In a LDC application, the burden of proof is on the applicant. Although it would have been open to the Council to request further information from the applicant in this case, given the matters in dispute, I consider it highly unlikely such a request would have resulted in a different decision by the Council. The Council was therefore not unreasonable in refusing the application on the basis of the information submitted.

Conclusion

17. I therefore conclude that unreasonable behaviour by Maldon District Council, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M Savage

INSPECTOR