
Costs Decision

Hearing Held on 11 January 2022

Site visit made on 11 January 2022

by J A Murray LLB (Hons) Dip.Plan Env DMS Solicitor

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

Decision date: 25 January 2022

**Costs application in relation to Appeal Ref: APP/V2635/C/19/3232062
Land at the rear of St Germans House, 14 Lynn Road, Wiggshall St.
Germans, King's Lynn, PE34 3DW**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr James Lee for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging without planning permission, the construction of a single storey brick built structure having the appearance of two semi-detached dwellings; a single storey wooden structure with UPVC door and windows and having the appearance of a detached dwelling; and associated parking and turning area.
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Decision

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

The submissions for Mr James Lee

2. The appeal process was unnecessary. From the outset, the appellant said the buildings were sheds. The enforcement notice was wrongly worded. As the appeal was based on the fact that the buildings are outbuildings, the position arrived at today could have been achieved at the outset and the costs of the appeal have been wasted. If planning permission is granted on the basis discussed, that is all that the appellant wanted.

The response by King's Lynn and West Norfolk Borough Council

3. Having seen the buildings and the nature of the construction of the brick building, including cavity walls, the concerns regarding the prospect of the use of the buildings as dwellings was understandable.
4. The intention was not clear from the appellant's response to a Planning Contravention Notice, and this was clouded by the curtilage issue, and whether the development would be permitted development. There were quite a few issues to balance, and the Council had the right to pursue the matter in the formal way that it did.

Reasons

5. The Planning Practice Guidance indicates that costs may be awarded against the party who has behaved unreasonably and thereby caused the party

applying for costs to incur unnecessary or wasted expense in the appeal process.

6. Although the appearance of the brick built structure was not necessarily inconsistent with the external appearance of possible dwellings, there was nothing substantial beyond that to indicate that they were dwellings. Notwithstanding the standard of construction of the brick building, its internal layout and lack of any facilities normally associated with a dwelling were entirely consistent with its use as an outbuilding. Whilst it has a UPVC door and windows, the wooden building is self-evidently just a shed.
7. In response to a Planning Contravention Notice, nearly 6 months before the enforcement notice was issued, the appellant stated that the buildings were sheds. This position was reiterated in the appellant's appeal statements, and at the hearing, and was borne out by what I saw during my site visit. The contention that the buildings were dwellings was not pursued by the Council with any force or enthusiasm at the hearing. In any event, whilst the reason for issuing the notice was based on the premise that the buildings were dwellings, the allegation itself was merely that they "had the appearance" of dwellings.
8. There were complexities in the arguments over whether, if they were not dwellings, the buildings would constitute permitted development. Nevertheless, it became clear that, even if they were not permitted development, the Council was quite content for planning permission to be granted for the buildings, subject to appropriate controls.
9. It is probable that, had the matter been investigated and considered thoroughly, enforcement action would not have been deemed expedient and the level of agreement reached during the hearing could have been achieved without formal enforcement action. The failure of the Council to do that was unreasonable, and this was carried forward into the appeal process, as the Council does not appear to have reviewed its position on receipt of the appeal statements, but only at the hearing itself. The appeal should not have been necessary, such that a full award of costs is justified.

Costs Order

10. 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 King's Lynn and West Norfolk Borough Council shall pay to Mr James Lee, 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.
11. The applicant is now invited to submit to King's Lynn and West Norfolk Borough 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.

JA Murray

INSPECTOR