



Costs Decision

Site visit made on 8 December 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Costs application in relation to Appeal Ref: APP/H0738/X/21/3282153 Land adjacent Tees View, Worsall Road, Yarm

- 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 Davison for a full award of costs against Stockton-on-Tees Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for 'use of land as garden within curtilage of Tees View'.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and where that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. PPG paragraph 049 states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals.
4. The appellant argues that the Council have acted unreasonably in terms of 'preventing or delaying an application which should clearly be permitted, on the balance of probabilities, the legal test for determining the certificate' and 'failure to produce evidence to substantiate each reason for refusal on appeal with poor-quality, vague, generalised or inaccurate assertions, which are unsupported by any objective analysis'.
5. On the first point, the wording found within PPG paragraph 049 is 'preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations'. It is self-evident that the Council did not prevent or delay the LDC application. They have also not prevented or delayed any development because none has been proposed. An LDC certificate is not a grant of planning permission. It is instead a statement of what is lawful relating only to the state of affairs on the land at the date of the certificate application.

6. In this case, the LDC application sought to establish the lawfulness of the use of the appeal site as a garden area within the curtilage of the dwelling at Tees View. For lawfulness to accrue, the appeal site must have been used continuously for the relevant period, in this case 10 years, for such purposes with an intensity, regularity and frequency that is more than de minimis, so as to have triggered a material change of use. The burden of proof regarding decisive matters of fact rests on the appellant, and the relevant test of the evidence is 'the balance of probability'.
7. The judgment in *Gabbitts v SSE & Newham LBC* [1985] JPL 630 makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason not to grant an LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.
8. As may be seen from my decision, I have found that the appellant's evidence, including the statutory declarations, has not been sufficiently detailed or precise to show that a material change of the use of the land has occurred. Furthermore, the 2012 photograph showing horses on the land introduces an ambiguity that the appellant's evidence fails to resolve satisfactorily. This is despite the ample opportunity presented through the appeal process to clarify why the horses were there, how long they were there, and whether or not they were pets or kept for some other purpose.
9. It is important to reiterate that the onus of proof here falls on the appellant, and not the Council, as reflected in the PPG statement that 'the applicant is responsible for providing sufficient evidence to support an [LDC] application.' It goes on to say that 'if' a local planning authority obtains evidence, this needs to be shared with the applicant, which the Council has clearly done in this particular case. I am also satisfied that the Council have given enough information to substantiate their reason for refusal within their written submissions.
10. Although the appellant focuses on the evidence relating to the presence or otherwise of fencing on the land, this matter is not in itself determinative. By the same token, the fact that the land was brought into the same ownership as the residence at Tees View does not automatically change its use to that of a garden area. Rather, it is the use of the land over the relevant 10 year period and whether a material change of use has occurred that is in question.
11. In summation, I have found that the legal test, of the balance of probability, has not been met in this case, and that there has been no unreasonable behaviour on the part of the Council.

Conclusion

12. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, an award of costs is not justified.

Elaine Gray

INSPECTOR