



Costs Decision

Site visit made on 29 March 2022

by Katie Peerless Dip Arch RIBA

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

Decision date: 7 April 2022

Costs application in relation to Appeal Ref: APP/J2210/X/20/3259064 64 Dargate Road, Yorkletts, Whitstable, CT5 3AE

- 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 & Mrs Michael Irwin for a partial award of costs against Canterbury City Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for existing use of land and buildings within residential curtilage.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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. Both parties have put their submissions and responses in writing and I will not repeat these here. However, the appellants consider that the Council has behaved unreasonably by refusing to issue an LDC for any of the land or buildings included in the original application. They also note that neither has the Council accepted during the appeal process that the dwelling has a residential curtilage, even if this is confined to the north-eastern section of the site. The appellants consider that this has left the dwelling with no defined curtilage, which is an unreasonable stance to take.
4. The Council states that it considers that the application was to establish whether the buildings were lawful as part of a residential curtilage that had been marked on plan 2778/3F. Because the Council believed that the buildings did not fall within the residential curtilage, they could not certify that they were lawful. It notes that the Planning Practice Guidance stipulates that an application for a LDC needs to describe precisely what is being applied for and the land to which the application relates.
5. The form for the original application states that a certificate is sought for an existing C3 (residential) use. The officer's report on the application notes that a certificate is sought for '*existing use of land and buildings within residential curtilage*' and this is the basis for the appeal. It seems to me clear from this description that it was understood that the applicants were seeking to establish the extent of the residential curtilage and to confirm that the outbuildings within it were also in a residential use.

6. Section 193(4) of the Town and Country Planning Act 1990 allows a local planning authority to grant a certificate for *'the whole or part of the land specified in the application and where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them'*. Therefore, unless the Council considered that no. 64 had no residential curtilage at all, which it has not claimed, it does seem to me unreasonable to refuse to issue a certificate for the part of the site that does form the curtilage.
7. As the appellants note, had the Council issued a certificate for the area that it believed was within the curtilage, the issues would have been narrowed and the appellants would have possibly been put to less expense at appeal. It seems that the Council has consistently refused to change its position even though it seemed to consider that the land to the north-east was within the curtilage. However, it has not confirmed whether or not this was the case either at the time of the original decision or during the appeal proves.
8. The appellants claim that this behaviour has put them to wasted expense and no doubt there has been some additional work undertaken by their agents on the basis that they have been given no firm idea as to the Council's position on the extent of the curtilage. It would be for the appellants to demonstrate precisely what additional expense they have incurred in dealing with this aspect of their case and, if they are able to substantiate this, in my view they should be able to recoup it from the Council.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial 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 Canterbury City Council shall pay to Mr and Mrs Michael Irwin, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred by the Council's refusal to issue an alternative Lawful Development Certificate for only part of the land included in the application; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Canterbury 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.

Katie Peerless

Inspector