

Costs Decision

Site visit made on 11 April 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th MAY 2022

Costs application in relation to Appeal Ref: APP/B1740/X/21/3278351 Land at 5 Greenbanks Close, Milford on Sea SO41 0SQ

- 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 and Mrs Allery for a full award of costs against New Forest District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the use of land as residential garden.
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Decision

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

The submissions

2. The costs application is summarised as follows:
 - That the Council have not provided evidence to indicate that the land in question was used for anything other than a residential garden for at least ten years;
 - That the Council failed to substantiate their reason for refusal of the application for a certificate of lawful use or development (LDC);
 - The enforcement officer expressed a view in internal correspondence that corroborates the appellants' version of events; and
 - The Council failed to produce an officer's report.
3. The Council has not responded to the costs application.

Reasons

4. Paragraph 030 of the Planning Practice Guidance on Appeals (the Appeals PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
5. Paragraph 049 of the Appeals PPG provides examples of unreasonable behaviour on the part of the local planning authority. These include:
 - 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; and
 - failure to produce evidence to substantiate each reason for refusal on appeal.

6. Although the first of these clearly relates to the determination of planning applications, the principle of this can be applied to circumstances where development is clearly lawful but an application for a LDC is refused.
7. Whilst it is unusual that the Council did not produce a report in determining the LDC application, it does not necessarily follow that this demonstrates unreasonable behaviour in this case. Evidence to substantiate the reasons for refusal is however, necessary to avoid an award of costs. In this regard I note that the Council have relied upon the evidence of interested parties, which was provided during the course of the determination of the LDC application.
8. The evidence of the interested parties is in some cases very detailed and submitted with documentary evidence to support the claims made. I also note the number of local residents who have consistently claimed that they have never observed the applicants using the land in question as residential garden. I am satisfied that this evidence is more than doubt, disbelief or scepticism of the appellants' version of events in this case.
9. The evidence of interested parties provides a degree of contradiction to the appellants' claims, and does not lead me to a conclusion that the LDC should clearly have been granted, as suggested in the example given in the Appeals PPG. Furthermore, this evidence forms the basis of the Council's case. Whilst it falls short of making the appellants' version of events less than probable, it is sufficient for me to conclude that, on balance, evidence has been produced to substantiate the Council's reason for refusal of the LDC.
10. For the reasons given above, I do not find that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR