
Costs Decision

Site visit made on 8 November 2022

by L Douglas BSc (Hons) MSc MRTPI

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

Decision date: 12 December 2022

**Costs application in relation to Appeal Ref: APP/Z3825/X/21/3274597
Stables on land south of Mill Lane, Littleworth, Partridge Green RH13 8JU
Grid Ref Easting: 518836, Grid Ref Northing: 120321**

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Wayne Bayley, Delcraven Ltd for a full award of costs against Horsham District Council.
 - The appeal was against the part refusal of a certificate of lawful use or development for proposed development (LDC) described on the application form as: This application seeks to establish the principle that, if and when the stables are lawfully converted into 2 holiday-let units under the terms of DC/18/1827 approved 24 October 2018 and used as such, they will then benefit from the full suite of domestic permitted development rights attributable to 2 x C3 dwellings which arise from Classes A to H of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

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

Reasons

2. The Planning Practice Guidance 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.
3. It is claimed that the Council amended the terms of the application after its registration without the agreement of the applicant, unilaterally introduced the issue of the curtilage of the building, incorrectly found certain development 'not lawful', and misdirected itself on the matter of whether 2 potential dwellings would benefit from certain permitted development rights.
4. The Council submitted a statement defending its decision to part-refuse the application for an LDC but did not submit any comments specifically addressing the applicant's costs application.
5. The description of the proposal in the Council's decision notice differs from that provided by the applicant in their application form. The original description in the application form describes what the applicant was seeking to obtain an LDC for, without describing in sufficient detail any particular forms of development. By the applicant's own account, the application was 'an attempt to obtain an "in principle" decision about whether the two dwellings the subject of DC/18/1827 could benefit from domestic PD rights'.

6. I have found that section 192 of the Act does not provide for the applicant to seek an in principle decision for insufficiently described proposed development which is reliant on another form of proposed development yet to be undertaken. In any case, the amended description of the proposed development at section 2 of the Council's decision notice is a reasonable and more concise version of the applicant's original description, without omitting any pertinent details. It did not change the nature of the application, but it should have been agreed with the applicant in advance. The Council acted unreasonably in changing that description without the agreement of the applicant. The minor nature of that change has not resulted in the applicant incurring any unnecessary or wasted expense in the appeal process.
7. As part of the Council's consideration of whether to grant an LDC, it was reasonable for it to consider all possible issues which may prevent the proposal from being lawful if instituted or begun at the time of the application. One such issue would be whether the dwellings, yet to be created, would benefit from any curtilage. The Council may have been wrong to conclude that neither dwelling would benefit from any curtilage, but it was not unreasonable for it to reach that conclusion considering neither dwelling existed at the time the application was made, and the broad undetailed description of development proposed.
8. The Council's decision notice states that part of the development for which an LDC was sought is lawful and part is not lawful. This is inconsistent with the provisions of section 192(2) of the Act. The Council's decision notice should have either confirmed that the development described in the application would be lawful if instituted or begun at the time of the application, or that the application had been refused. It was unreasonable for the Council to issue a decision notice which did not accord with section 192(2) of the Act.
9. The effect of the Council's erroneous decision notice is that the application was part-refused. The applicant's appeal representations reflect this and seek to explain why it is considered that an LDC should have been issued in respect of the proposed development. Had the Council issued a decision in accordance with section 192(2) of the Act, consistent with the reasoning in its officer report, it would have needed to refuse to issue an LDC. The Council's erroneous decision notice has not therefore resulted in the applicant incurring any unnecessary or wasted expense in the appeal process.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, an award of costs is not justified.

L Douglas

INSPECTOR