
Costs Decision

Site visit made on 15 February 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2023

Costs application in relation to Appeal Ref: APP/X1545/X/21/3283042 Sewells Barn, Sewells Farm, Little Braxted, Witham, Essex CM8 3ET

- 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 Ms L Yeates for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the use of Sewells Barn as an independent dwellinghouse.
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Decision

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

Background

2. The Planning Practice Guidance (the 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. In this case the applicant considers that the Council has acted unreasonably because it did not submit a Statement of Case, it relied on circumstantial evidence, and it has not provided any information to contradict the evidence produced by the applicant. Furthermore, the applicant considers that in opening an enforcement investigation the Council has accepted that Sewells Barn is being used as an independent dwelling.
4. On this basis the applicant considers that the certificate for lawful use should have been granted and the appeal, and the costs associated with it, could have been avoided.

Reasons

5. The Council did not provide a Statement of Case. The Certificate of lawful use or development appeals: procedural guide states that as part of the appeal form appellants must submit an appeal statement. However, there is no requirement for the Local Planning Authority (LPA) to provide an appeal statement. The Council did not act unreasonably in not providing a statement.
6. In relation to the evidence provided by the Council principally in the form of the officer report, it will be seen from my decision that I have found that there is very limited evidence to contradict the arguments which have been made by

the applicant. However, the onus is on the applicant to make out her case on the balance of probabilities.

7. The applicant refers to the advice contained in the Guidance. However, her reference is partial and read in full the guidance is as follows:

‘In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability’.

8. It will be seen from my decision that in this case I found, as the Council did when it made its decision, that the evidence provided was not sufficiently precise and unambiguous to justify the grant of an LDC.
9. The applicant refers to the Council having initiated an enforcement investigation and there is evidence before me in the form of a completed Planning Contravention Notice (PCN) and email from the agent who represents the applicant and her daughter who has provided evidence to the appeal. The PCN identifies a material change of use of an outbuilding as the alleged breach of planning control. Amongst the questions in the PCN is one seeking the applicant’s opinion on the current use of the ‘outbuilding’.
10. I do not find that the service of the PCN amounts to an acknowledgement that Sewells Barn has been an independent dwelling to the extent that the appeal was unnecessary. The service of the PCN was a legitimate action by the Council following its decision on the application for a LDC, particularly given that the appeal was not submitted until nine months after the decision was made and the Council could not have predicted the outcome of any appeal.
11. For the reasons set out above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Sarah Dyer

Inspector