



Costs Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

**Costs application in relation to Appeal Ref: APP/L3815/X/22/3300146
Building 3, Jardene Nursery, 16 Chalk Lane, Sidlesham, Chichester, West
Sussex PO20 7LW**

- 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 Agostinelli for a full award of costs against Chichester District Council.
 - The appeal was against the refusal for a certificate of lawful use or development for the use of building 3 for B1 and B8 purposes.
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Decision

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

The submissions for the Claimant

2. In essence, the claimant submits that the Council acted unreasonably and made errors in not granting the Lawful Development Certificate (LDC) which resulted in the need for an appeal to be made.

The response by the Council

3. The Council with reference to its Officer's reports state that the determination of the LDC application took into account all the submitted evidence.

Reasons

4. The Planning Practice Guidance (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. The claimant maintains that the Council should have granted the certificate of lawful use or development (LDC) based on the claimant's evidence that the use of the appeal building as a carpentry workshop began in 2008. It is contended that the Council confused the planning history and applied their assessment to building 5 and not building 3.
6. The PPG states that where local planning authorities have exercised their duty to determine planning applications in a reasonable manner, they should not be liable for an award of cost. As detailed in my decision, although the Council conceded that the delegated report may have resulted in some confusion regarding the considered use of the building in 2017, I have no reason to doubt that the Council considered the claimant's submissions and made its decision based on all the submitted evidence in relation to building 3. Also, the Council

- provided sufficient reason where it considered the claimant's evidence insufficient, to substantiate its reason for not issuing an LDC.
7. As detailed in my appeal decision I have found that the claimant's evidence is insufficiently precise and unambiguous to demonstrate, on the balance of probabilities, whether the use of the appeal building changed to a use as a carpentry workshop on or before 26 October 2010, and such use continued substantially uninterrupted in excess of 10 years.
 8. The claimant says they were advised by planning officers to "go for full planning for B1 use, or an ELD." Whilst the PPG indicates that all parties are expected to behave reasonably "throughout the planning process," and not just during the appeal process, giving advice will not necessarily constitute unreasonable behaviour if that advice turns out to be flawed. The claimant chose to make a LDC application and has been professionally advised and represented throughout the subsequent appeal process. The application relied upon the history of the use of the property, rather than permitted development rights, and so did the appeal. The local planning authority addressed the case put by the claimant based on the history of the use, as did I. Even when making the costs application, the claimant made no mention of permitted development rights until they submitted their final comments. Even if the claimant is right about the application of permitted development rights, I am not satisfied that the Council behaved unreasonably in not identifying this before.
 9. I am unable to conclude that the Council behaved unreasonably. The costs incurred by the claimant in pursuing the appeal were the normal costs arising when the right of appeal is exercised.
 10. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Elizabeth Jones

INSPECTOR