



Costs Decision

Site visit made on 15 August 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 1st September 2023

Costs application in relation to Appeal Ref: APP/P0240/X/22/3301078 Land at 1 Four Acre Drive, Wixams, Houghton Conquest, Bedford MK45 3GT

- 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 Kevin Cornes for a full award of costs against Central Bedfordshire Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use of the land edged red as residential garden and 1.8m timber fence.
-

Decision

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

Reasons

2. The application is for a full award of costs against Central Bedfordshire Council. The Planning Practice Guidance (PPG) 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. The appellant contends that the local planning authority acted unreasonably with respect to the substance of the matter and failed to produce evidence to substantiate its reason for refusal. He further submits that there has been no objective analysis of the detailed plans submitted and incorrectly applied the provisions of the Town and Country Planning (General Permitted Development) (England)(Order) 2015 as amended (GPDO).
4. PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include, failure to produce evidence to substantiate each reason for refusal on appeal and acting contrary to, or not following, well-established case law¹.
5. It is the Council's case that they conducted a fair and thorough examination of all the documents and the site's planning history and provided details of the approved layout and external works plan, decision notice and discharge of

¹ PPG: Paragraph: 049 Reference ID: 16-049-20140306.

- condition applications relating to the Land. It is their view that those plans identify clear boundaries to the plots and illustrate planting and amenity areas.
6. However, it is clear from my decision that although it may have been the Council's intention for this land to be "amenity land" and fulfil a landscape function, its lawful use is residential. The approved position of a boundary wall and a couple of tree stamps on an approved plan does not provide evidence of lawful land use.
 7. I appreciate that the Council provided a statement in support of their appeal. However, it is incumbent on a local planning authority to have a good understanding of planning legislation and case law. Despite a request from the appellant during the application process for clarification on the Council Officer's position, the Council failed to provide any substantive evidence at that time, nor during the appeal process, to demonstrate how the approved plans and conditions secured the land as "amenity land", nor why its use as a residential garden would amount to a material change of use of the land².
 8. Turning to the proposed fence. Again, it is incumbent on a local planning authority to have a good understanding of planning legislation and case law. The application was made under s192 (1) of the Act, and it was clear from the appellant's application submission that the proposal was for a new stand alone fence which would be constructed adjacent to a pedestrian footway, and not part of the existing fence fronting a highway used by vehicular traffic as suggested in the Council Officer's Delegated Report. Furthermore, the Council's view that the new fence formed part of the existing fence was irrational and not supported by any objective analysis.
 9. For the reasons given above, I conclude that the Council did not substantiate their case and their decision was not based on any objective analysis which resulted in an appeal which could have been avoided.
 10. I therefore conclude that unreasonable behaviour by the Council resulted in unnecessary expense, as described in the PPG, has been demonstrated and a full award of costs is justified.

Costs Order

11. 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 Central Bedfordshire Council shall pay to Mr Kevin Cornes, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Central Bedfordshire 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.

Elizabeth Pleasant

INSPECTOR

² Email correspondence dated 9 February 2022, Appellant's Statement of Case.