The Planning Inspectorate

Costs Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2023

Costs application in relation to Appeal Ref: APP/W1850/X/22/3307001
Lower Ledicot Farm, Ledicot Lane, Shobdon HR6 9NX

- 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 A and G Roberts for a full award of costs against Herefordshire Council.
- The appeal was against the part refusal of a certificate of lawful use or development for a dwellinghouse, driveway and access.

Decision

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

Reasons

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. The applicants say that, in losing the plans and documents relating to the 1969 permission and the 1983 permission, the LPA failed to meet its statutory obligation to keep good records which represents a clearcut case of maladministration. They say that amounted to unreasonable behaviour causing unnecessary costs to the appellants in having to submit the LDC application on grounds of lack of precision and enforceability thereby seeking a certificate of lawful development for the appellants' dwelling under the four-year rule.

4. However, the applicant does not point to which specific statutory obligations the LPA has failed to meet. In any event, it is difficult to see why the missing documents meant the applicants were forced to submit an application for an LDC. This is not a case where the LPA has taken enforcement action and the applicants have had to engage in establishing lawfulness. The applicants have voluntarily sought to establish lawfulness under the provisions of the Act.

5. Moreover, it was not, as the appellants suggest, unreasonable for the LPA to request plans for the dwelling as built to accompany the LDC application. Indeed, it would have been unreasonable for the LPA to determine the LDC application without such information.

6. Furthermore, as addressed in the appeal decision, it was not unreasonable of the LPA to modify the description of the LDC application. Indeed, S191(4) of the Act sets out that, "if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter

described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application." Thus, in directing itself in accordance with the statutory provision of S191(4), there can be no question of unreasonable behaviour.

7. Ultimately, the LPA are only able to base a decision on an LDC application on the evidence available to them at the time of the decision and the burden of proof rests with the applicant. I see nothing to suggest the LPA did not determine the appeal on the balance of probabilities (which is the appropriate test – not beyond reasonable doubt as the applicants refer to) of the evidence before them. Nor do I see any evidence which suggests the LPA's decision was based on "supposition" as the applicants repeatedly claim, as opposed to the evidence before them.

8. Indeed, as can be seen from the appeal decision, the applicants' claim that the LPA's position that the dwelling was built in accordance with the original consent ref 27427 has been proven to be wholly incorrect is, in my view, wrong. From the evidence which the parties have put before me, I have found the LPA's decision was well-founded.

9. Overall, I see nothing in the applicants costs submissions which demonstrates unreasonable behaviour on the part of the LPA.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

J Whitfield

INSPECTOR