



Costs Decision

by D Hartley BA(Hons) MTP MBA MRTPI

Decision date: 17TH NOVEMBER 2023

**Costs application in relation to Appeal Ref: APP/C4615/X/22/3303711
55 Blewitt Street, Pensnett, Brierley Hill DY5 4AN**

- 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 Mrs Tina Watton for a full award of costs against Dudley Metropolitan Borough Council.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the existing use of the land as residential garden land and associated fencing.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The claim made by the applicant is that the local planning authority (LPA) did not make reasonable enquiries to cross check the substantive evidence submitted especially with other Council departments which it is said had direct evidence. It is also suggested that the LPA did not visit the appeal site given the production of '*overhead photos in an attempt to claim that the site was not fenced in 2016*'. The applicant states that the Council does not have sufficient evidence to refute what she has said and given this, coupled with the sworn statement, an approved LDC should have been issued.
4. It is understood that the appeal land was previously owned by the Council. It is perhaps on this basis that the applicant raises concern about the LPA allegedly not cross-checking evidence with other Council departments. The onus was, however, on the applicant to make her case that the land was lawfully residential garden land with associated fencing. As part of any evidence gathering, she could have obtained the views of other Council departments, should that have been necessary, and included any response(s) as part of the LDC application. In the context of this LDC application, I do not therefore find that it was necessary for the LPA to have undertaken any internal cross checking of evidence.
5. I acknowledge that the PPG advises that if an LPA has no evidence of itself, nor from any others, to contradict or otherwise make the applicant's version of events less than probable, there should be no good reason to refuse an LDC

application. However, this is provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of an LDC on the balance of probabilities. I have found that the applicant's evidence was not sufficiently precise, and the degree of ambiguity was such that on the balance of probabilities, it was not possible to grant an LDC. The LPA reached a similar finding and hence I do not consider that it acted unreasonably in refusing to grant an LDC.

6. I do not know if the LPA visited the site. They have not provided any comments in response to the applicant's costs application. Whether the site was visited or not, the LPA did consider all of the evidence that was submitted by the applicant. The provision of an aerial image from 2016 and 2022 does not in itself mean that the appeal site was not visited by the LPA, or, in any event, that it did not suitably assess the evidence that was submitted by the applicant and reach a reasonable conclusion that, on the balance of probabilities, the LDC should not be granted.

Conclusion

7. For the above reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

D Hartley

INSPECTOR