



Costs Decision

Site visit made on 30 August 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2023

**Costs application in relation to appeal Ref: APP/F0114/X/22/3308287
Land at Papermill Cottage, Leigh Lane, St Catherine, Bath and North East
Somerset BA1 8HG**

- 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 Janice Hemms for a full award of costs against Bath and North East Somerset Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the use of property as residential curtilage.
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Decision

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

The Submissions

2. The reasons given for the costs application are summarised as follows:
 - The Council's allegation regarding the insufficiency of evidence appears ill-founded;
 - The reasons for refusal of the LDC application are unclear, vague and generalised;
 - There is a lack of clarity in respect of the Council's position; and
 - The Council has failed to cooperate in requests from the applicant for it to clarify its position.
3. I have had regard to the respondent's comments in reaching my decision.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, 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.
5. Paragraphs 047 and 049 of the PPG provides examples of unreasonable behaviour on the part of the local planning authority. Some that might be relevant to this costs decision include:
 - lack of co-operation with the other party or parties;
 - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;

- failure to produce evidence to substantiate each reason for refusal on appeal;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and
 - acting contrary to, or not following, well-established case law.
6. Although some of these examples relate more to the determination of appeals made under section 78 of The Town and Country Planning Act 1990 as amended, the principles of these can be applied to this case.

Reasons

7. The advice in the Planning Practice Guidance document on lawful development certificates was relevant in the case of this appeal. This advises that an LDC application should not be refused if the applicant's evidence is sufficiently precise and unambiguous, and there is no evidence to contradict or otherwise make the applicant's version of events less than probable.
8. I have found the evidence of the use of the land prior to 2009 to be vague and that given by the applicant herself was not a first-hand account of her observations or knowledge of the use of the site. There was also evidence from an interested party (a former owner) to contradict what had been claimed by the applicant. I concluded that the applicant's evidence was not sufficient to demonstrate that, on the balance of probability, the material change of use of the land for which the LDC was sought had taken place prior to her purchase of Papermill Cottage in 2009. Accordingly, I do not find the respondent to have behaved unreasonably in suggesting that this evidence was not sufficient.
9. As for the applicant's evidence relating to the time since she took ownership of Papermill Cottage, this was extensive. Save for the use of the shepherd's hut, the applicant gave a detailed account of the activities she undertook on the land since her purchase of it in 2009. This was also corroborated by interested parties.
10. The respondent's case with regard to this evidence was not to say that the activities described had not occurred or that they have not occurred since the applicant took ownership. Instead, it's case was that the activities that the applicant has undertaken on the land do not demonstrate that the land has been used for the purpose of a residential use. It was the respondent's case that some of the activities described by the applicant might also be considered to demonstrate another use of the land, such as an agricultural use. Also, whilst some of the activities were of a domestic nature, the evidence did not show that these activities were frequent.
11. I acknowledge that the way this was articulated in the reason for refusal of the LDC application was not entirely clear and that the respondent's evidence setting out it's case was brief. Nevertheless, the respondent's delegated report and appeal statement was sufficient in clarifying the respondent's position in this case. I do not find this to be vague, generalised or inaccurate, such that it does not adequately substantiate the reason for refusal of the LDC application.
12. Ultimately, I have not agreed with the respondent on the matter of whether or not the use of the land for an incidental residential use had become lawful prior to the shepherd's hut having been brought onto the land. Nevertheless, I do

not consider the respondent's approach to this case to be unreasonable. Indeed, the growing of vegetables and fruit trees, as well as the keeping of chickens are ordinarily regarded as agricultural activities. Added to this is the representation of a former owner, which did cast some doubt on the applicant's claims.

13. The respondent could have been more helpful in engaging with the applicant following the refusal of the LDC application. It could have better articulated and expanded upon its reasons for refusal. However, I cannot see that this would have resulted in a change to the respondent's position in this case.
14. For the reasons given above, I cannot regard this to be a case where the LDC should have clearly been granted and where the appeal was avoidable. I would conclude the same, even if I had allowed the appeal and found that the lawful use rights of the appeal site had not been lost in some form.
15. There was one aspect of the applicant's evidence that was not at first sufficiently precise and unambiguous; that is her evidence relating to the use of the shepherd's hut. The only insightful evidence relating to this came later in the appeal process. It might well have been that the use of the hut was not a matter considered in the respondent's determination of the LDC application. Nevertheless, in an LDC case the onus is on the applicant to demonstrate that the use is lawful. As the necessary details regarding the use of the shepherd's hut had not been provided at the application stage, this only adds weight to my conclusion that the respondent did not act unreasonably in refusing the LDC application.
16. As for the respondent's application of relevant case law, I can only see that the correct test of the evidence was applied. Whether or not the activities carried out by the applicant on the land amounted to an incidental residential use is a matter of judgement. As I note above, the respondent did not doubt that the applicant had carried out the activities she said she had on the land. Instead, the respondent's case was that these did not demonstrate an incidental residential use. I am satisfied that the respondent has provided sufficient justification for making its case in this way.
17. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR