
Costs Decision

Site visit made on 5 December 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Costs application in relation to Appeal Ref: APP/H0520/X/23/3315507 Paddock View, 24 High Street, Spaldwick, Cambridgeshire PE28 0TD

- 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 Graham Titheridge for a full award of costs against Huntingdonshire District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use of land as a garden associated with Paddock View, 24 High Street, Spaldwick, Huntingdon PE28 0TD and associated lawful development comprising a summerhouse and a children's play frame.
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Decision

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

Reasons

2. The Planning Practice 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. "Unreasonable" is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. In summary, the appellant contends that the Local Planning Authority has behaved unreasonably in that it has failed to apply the correct legal criteria in determining the appeal and in its reasoning for refusing the application for a LDC. In particular it is argued that the evidence submitted by the appellant demonstrates that for a period of at least ten years prior to the application being made, the land is no more than a use ancillary to the use of the land or buildings granted under planning reference 0300582FUL on 17 October 2003. In addition, it is argued that the Council has produced no evidence that is fatal to the appellant's case and has not even commented on the appellant's Statement of Case which included additional evidence to that which was submitted with the original application. The appellant considers the Council's confusion and muddled thinking is apparent from its failure to approach the application with respect to the summerhouse and children's play frame on the

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

correct legal basis as operational development and furthermore, the incorrect red line was shown on the plan attached to the decision notice.

4. In the Main Decision I have reasoned that the evidence submitted by the appellant is insufficient to prove on the balance of probability that the use of the property has changed to garden associated with Paddock View, 24 High Street on or before 18 May 2012 and that the use then continued for 10 years after the date of the change. This relates to the condition of the land in question, physical separation, insufficient evidence of use of the land for domestic purposes for a continuous period and lack of garden features. Furthermore, the Council's own evidence, including photographs, appears to contradict the appellant's own evidence with respect to the specific use of the land during the material period.
5. Therefore, I do not agree that the Council's has failed to apply the correct legal criteria or test and its reasoning with respect to the garden use is not at all unreasonable. As I have stated in my Main Decision, cases such as this fall on the merits of each case and on the specific evidence submitted by parties. In this case, I have found against the appellant on the garden use.
6. The Council has not determined the application correctly with reference to the summerhouse and children's play frame, but throughout the appeal process has defended its approach until late on when it has come to understand that the appellant was seeking a LDC on the basis that they both comprise operational development that had been on the appeal site for a period of at least four years prior to the application being made. Instead, the Council determined that part of the application on the basis of whether or not they comprised permitted development under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 1995 (as amended). Had the Council correctly determined this part of the LDC application earlier, that part of the appeal could have been avoided. Therefore, in that respect the Council has behaved unreasonably and has caused the appellant to incur wasted expenses in the appeal process.
7. The Council has admitted that in error the red edge shown on the plan attached to the decision notice does not relate to the appeal site. The Council admits to this error, but that does not change their determination of the application, nor can I see that it has resulted in the appellant incurring unnecessary or wasted expense in the appeal process. The Council's determination of the appeal with respect to the garden area is clear and it is also clear that they have determined the application on the basis of the correct area of land.

Conclusion

8. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated with respect to the summerhouse and children's play frame and that a partial full award of costs is justified.

Costs Order

9. 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 Huntingdonshire District Council shall pay to Mr Graham Titheridge, the costs of

the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the summerhouse and children's play frame; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to Huntingdonshire District 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.

A A Phillips

INSPECTOR