



Costs Decision

Site visit made on 23 January 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 11 March 2024

Costs application in relation to Appeals Ref: APP/H1840/C/23/3323911, APP/H1840/C/23/3323912, APP/H1840/C/23/3323913 and APP/H1840/C/23/3323914

Orchard Crest, Cleeve Road, Middle Littleton, Evesham, Worcestershire WR11 8JT

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Nicholas Axworthy, Mrs Clare Axworthy, Mr Jake Axworthy and Ms Weronika Jasek for a full award of costs against Wychavon District Council.
 - The appeal was against an enforcement notice alleging the unauthorised development consisting of the erection of an outbuilding.
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Decision

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

Reasons

2. 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. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. In this case, it is for the applicants to demonstrate that they have incurred unnecessary or wasted expense in making an appeal against the enforcement notice which was issued for the erection of the outbuilding without the required planning permission.
3. The applicants have cited 'the behaviour of the LPA' as the reason for the application for costs. They consider that the reason for the Council refusing their retrospective planning application was 'a farce and that there was never a good reason to refuse it'. In addition to this stance, it seems that although the applicants believe the building was erected in 'good faith' in response to the 'Homes for Ukrainian' appeal, they consider that the Council should have exercised discretion and supported the construction of the building. The applicants argue that the Council's actions were 'misguided' and fundamentally unreasonable. I note that there are further grievances aired by the applicants against the Council relating to perceived maladministration and misconduct. These matters are not for my consideration.
4. LPAs have discretion to take enforcement action when they regard it as expedient to do so having regard to the development plan and any other material considerations. The outbuilding was erected outside the limitations of Class E of Part 1, Schedule 2 of the Town and Country Planning (General

Permitted Development) (England) Order 2015 (the GPDO) and the LPA refused the retrospective application to retain the structure. The Council considered that following the refusal of the planning application, an enforcement notice was expedient due to the reasons for refusing the planning application. These reasons were subsequently stated as being the reason to issue the enforcement notice and justified in the council's supporting statement.

5. In these circumstances I concur with the Council that the serving of the notice against the breach of planning control was reasonable, even though I came to a contrary decision regarding the effect of the development on the character and appearance of the street scene and surrounding area.
6. Although the Council's reason for refusing the application and issuing the notice concern only the effect of the outbuilding on the character and appearance of the area, the applicants consider that the serving of the notice led to the loss of housing for the Ukrainian refugees. Furthermore, now that the building is occupied by two of the applicants (the son and his partner), it is alleged by the applicants that the requirements of the notice to remove the building would render them homeless.
7. Firstly, I do not consider that the Council failed to properly evaluate the development or that their judgement was flawed. I consider that the Council has provided robust reasons for opposing the development on the grounds of character and appearance and it was not unreasonable for objecting to the development on this basis. The Government's call for 'Homes for Ukraine' was for the use of existing space to accommodate individuals or families and I consider that there was no requirement for the Council to give weight to the erection of the outbuilding for such a purpose.
8. Furthermore, while the Council's reason for issuing the notice did not specify the use of the outbuilding, it is clear from the evidence presented by the applicants through their appeal and from what I observed at my visit, that the building is occupied by family members in an incidental manner to the residential use of the main dwellinghouse. Although fitted out to enable *independent* living accommodation, it is not used as such nor intended to be used as such. Accordingly, its removal, as required by the enforcement notice, would not render the occupants homeless because it is used as incidental accommodation in association with the primary residential use of the host dwelling.
9. It follows that I am satisfied the Council has shown that it was able to substantiate its reasons for issuing the enforcement notice. Accordingly, the serving of the notice has not resulted in unreasonable behaviour on the part of the council. It would have been necessary for the applicants to appeal the planning refusal or the enforcement notice if they wished to retain the building.
10. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated and that an award of costs is not justified.

SA Hanson

INSPECTOR