



Costs Decision

Site visit made on 26 January 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2024

**Costs application in relation to Appeal Ref: APP/M1005/X/23/3326331
Twenty Acres Farm, The Farmhouse, Riddings Lane, Dalbury Lees,
Derbyshire, Ashbourne DE6 5BG**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr D Shepherd for a full award of costs against Amber Valley Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the residential use of land associated with the dwellinghouse.
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Decision

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

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. The word "unreasonable" is used in its ordinary meaning as established by the Courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774, and not in the stricter public law definition of "*Wednesbury*" unreasonable.¹
3. Local planning authorities are required to behave reasonably with respect to the substance of the matter under appeal. Examples of unreasonable behaviour include, acting contrary to, or not following, well-established case law. The applicant asserts that the Council has overlooked relevant case law and key definitions established in the courts, which were presented to them during the application process.
4. The applicant suggests that the dates recorded on the decision notice and officer report, which predates the submission of additional information, including case law, indicates the decision was made prior to the submission of additional evidence. The Council states that the date given on the officer report was incorrect and that the decision was made on 26 June 2023, to allow for the additional supporting information referred to by the applicant to be considered.
5. However, while the officer report refers to additional evidence, it is not clear from the report how the Council has considered *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin), if at all. The Council does not appear to have considered the factual situation at the time of the application and the

¹ *Wednesbury* unreasonableness refers to a decision that is so unreasonable that no reasonable authority would ever consider taking it.

determination of curtilage appears based upon whether the land has been used as such for a period of 10 consecutive years, which is inconsistent with the case law cited.

6. It is also not clear how the Council has considered *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207 or what the Council considered the planning unit to be at the date of the LDC application, or over the 10 years prior to the submission of the LDC. Commentary regarding the planning unit in the officer report is ambiguous and does not assist in understanding the Council's assessment or its conclusion regarding material change of use.
7. The Council also appears to have conflated curtilage with the use of land. This may, in part, be as a result of the applicant's description on their application form and the fact that they ticked 'the use began more than 10 years before the date of this application'. However, given the applicant's arguments that the land was within the curtilage of the dwellinghouse, the Council should have considered whether section 55(2)(d) of the Act applied.
8. Had the Council done so, having regard to *Sumption and Sinclair-Lockhart's Trustees v Central Land Board* (1950) 1 P&CR, it may have found it unnecessary to refuse the LDC application in relation to the land shaded in green and, since the appellant advises the access driveways are a 'point...not warranting further debate', the appeal is likely to have been unnecessary.
9. I find the Council has not followed well-established case law, which is unreasonable. This has caused the appellant to incur wasted expense in appealing the Council's decision.

Conclusion

10. Thus, for the reasons given above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Amber Valley Borough Council shall pay to Mr D Shepherd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Amber Valley Borough 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.

M Savage

INSPECTOR