



Costs Decision

Site visit made on 17 May 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 4th July 2024

Costs application in relation to Appeal Ref: APP/V3120/X/22/3307249 Silver Trees, The Green, Fernham SN7 7NT

- 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 Rogers for a full award of costs against Vale of White Horse District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the erection of a porch canopy.
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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.
3. In this instance, the applicant alleges unreasonable behaviour on the following grounds:
 - there were no justifiable reasons to support the Council's reason for refusal;
 - the Council failed to properly assess the evidence submitted in support of the application;
 - the Council did not follow caselaw and/or advice in the PPG;
 - the Council made false statements in its delegated report and failed to act in a positive and proactive manner; and
 - the Council prevented and delayed development which should clearly have been permitted.
4. The applicant's case was predicated on the appeal property having always been a residential dwelling, as far back as the late 1800s. The applicant said that use of the appeal property in 1948, when planning legislation first came into force, was residential, and its lawful use has remained as such ever since.
5. Notwithstanding the substance of the applicant's case, the Council appears to have primarily considered whether the building had been continuously used as a residential dwelling for at least 4 years preceding the application, to establish whether its use was lawful. This approach is reflected throughout the delegated officer report. For example, paragraph 1.4 says that "*Officers did not consider*

that the sporadic documents submitted, particularly in lieu of evidential Council Tax documents – reasonably demonstrated that, on the balance of probability, the building has been used continuously as a domestic residential dwelling for at least the last 4 years”.

6. The reason for refusal set out in the decision notice also says:

“On the balance of probabilities, the Local Planning Authority is not satisfied that the use of the building within the red line application site as shown on plan 0332 PD-01 has been used for a continuous period of 4 years prior to the date of application as a single dwellinghouse. It is therefore considered unlawful under section 191 of the Town and Country Planning Act 1990 (as amended)”.

7. The test of continuous use is primarily applicable to circumstances where an applicant seeks to establish that a breach of planning has become lawful. Yet in this instance, the applicant’s case was that a breach of planning had not ever occurred. In turn, the Council’s starting point for assessment of the application appears to have been flawed.
8. In terms of evidence, the applicant submitted numerous historic records, maps and photos of the property which supported their position that the property had always been a cottage. Several of these documents were from legitimate and reputed sources, including a museum, Berkshire Records Office, and an archaeological society. Yet the evidential value of these documents appears to have been discounted by the Council, without any objective analysis. The Council even says in its delegated officer report that *“evidence has not been submitted formally with the application in relation to its use”*. This position was plainly incorrect.
9. The Council’s approach is problematic in the context of its own lack of evidence. Their records are unclear and vague, with records simply describing the property as “Land, Ancillary Building”. The representation made by a local neighbour, which described the building as a workshop, was also not supported by objective evidence. The applicant’s documents and records, which were far more extensive, were clearly the main legitimate sources of evidence of the building’s historic use, and should have been ascribed much more credence and consideration.
10. Notably, the principle established in *Gabbitas*¹ says that where there is no evidence to contradict an appellant’s version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, then it should be accepted. In this instance, the evidence submitted by the applicant was entirely consistent with their position that the property had always been a residential cottage. Given the age of the property, this evidence was sufficiently precise and unambiguous, noting that historic records are unlikely to be entirely conclusive in respect of very old properties. The Council also had little evidence of its own to contradict the applicant’s version of events or make it less than probable. In turn, the evidential test established in *Gabbitas* does not appear to have been applied correctly.
11. When these factors are considered together, I consider that substantively, the Council did act unreasonably with regard to the appeal application. The PPG gives several examples of substantive unreasonable behaviour which can lead

¹ *Gabbitas v SSE & Newham BC* [1985] JPL 630

to an adverse costs award. These include failing to produce evidence to substantiate a reason for refusal, making vague and generalised assertions unsupported by objective analysis, and acting contrary to well-established caselaw. To some degree, the Council's behaviour reflects each of these examples.

12. Unreasonable behaviour resulting in unnecessary or wasted expense has therefore occurred and a full award of costs is warranted.

Costs Order

13. 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 Vale of White Horse District Council shall pay to Mr Rogers, 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.
14. The applicant is now invited to submit to Vale of White Horse 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.

James Blackwell

INSPECTOR