



Costs Decision

Hearing held on 23 July 2024

Site visit made on 23 July 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2024

Costs application in relation to Appeal Ref: APP/W1850/X/23/3323923 Redwood Orchard, St. Michaels, Tenbury Wells, Worcestershire WR15 8TL

- 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 Ms Brigid Eakins for a full award of costs against Herefordshire Council.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) for the proposed siting of a mobile home in accordance with the use allowed under the extant certificate 130612/U.

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.
3. Unreasonable behaviour in the context of an award of costs may be either procedural, relating to the process; or substantive, relating to the issues arising from the merits of the appeal. The PPG advises that awards cannot extend to compensation for indirect losses.
4. It is submitted that the behaviour and actions of the Council have resulted in an unnecessary appeal and associated expense for the applicant. In particular, the applicant submits that the Council's argument that the lawful development certificate (LDC) issued on 21 June 2013¹ ("the 2013 LDC") was no longer extant, and its decision to issue an "Application Not Required" letter to her in January 2014 ("the 2014 ANR letter") along with the subsequent issuing of an enforcement notice amounts to unreasonable behaviour.
5. I fully appreciate that the applicant is aggrieved by the way in which the Council has handled matters historically at the appeal site. I note that a previous appeal decision from 2016 was critical of both documents including that the 2013 LDC "*should not have been issued in that form*"², and that the 2014 ANR letter "*does not constitute a decision at all*"³. I share the criticism of both documents, including the 2014 ANR letter which directly led to the

¹ Council Reference 130612/U

² Paragraph 4 of APP/W1850/X/15/3002415

³ Paragraph 12 of APP/W1850/X/15/3002415

- applicant replacing the mobile home on the site with the "log cabin" which was subsequently subject of formal enforcement action.
6. However, those matters concerning the Council's issuing of the 2014 ANR letter, and the subsequent decision to issue an enforcement notice, are not for my consideration of this appeal which is for a LDC for the proposed siting of a mobile home in accordance with the use allowed under the 2013 LDC. Furthermore, I can only consider unreasonable behaviour and wasted expense incurred in this appeal, and not matters relating to previous applications and decisions at the site.
 7. The Council's reason for refusing to grant the LDC subject of this appeal stated that *"as the caravan at the heart of application P130612/U has been removed permanently from the site and not replaced immediately by another structure that meets the definition of a caravan, the use has ceased. As such the siting of a caravan in accordance with P130612/U would no longer be lawful"*.
 8. The Officer's report for the application specifically refers to the appeal decision at the site from 2016 where it was found that *"no use is granted by that [2013] LDC"*, and that it was the Council's view therefore that *"the use of the caravan was never established"*. Consequently, there is some ambiguity in the Council's case as the decision notice refers to the use allowed under the 2013 LDC having ceased, whereas the Officers report highlights that that no use was granted by the 2013 LDC.
 9. As can be seen from my decision, I have found the lawful use of the land to be agricultural. Whilst it may be possible to site a mobile home on the land for purposes ancillary to that use, the applicant's case was primarily focused on establishing whether a "non-permanent" or "temporary" residential use was lawful. This is clear from part 7 of the LDC application form, and appeal submissions made both in writing and verbally at the hearing. Particularly following the issue of the enforcement notice and dismissal of previous LDC appeals on the site, the Council's position that there was no lawful residential use was clear.
 10. As a result, whilst the Council's decision for refusing to grant a LDC could have been clearer and less ambiguous, it is nevertheless apparent that the Council would not have issued a LDC for any residential use of the appeal site. I have also found the Council's decision to be well-founded and consequently I do not consider that the appeal could have been avoided.
 11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Jones

INSPECTOR