



Costs Decision

Site visit made on 3 June 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Costs application in relation to Appeal Ref: APP/L1765/X/22/3305330 Broom Copse Farm, Spiers Lane, New Alresford SO24 9TY

- 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 Roger Smith for a full award of costs against Winchester City Council.
 - The appeal was against a refusal of a certificate of lawfulness concerning the construction of a building and its use as a single dwellinghouse.
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Decision

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

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.
3. The application is made on both a procedural and substantive basis. The thrust of the application is that the Council has prolonged proceedings by introducing a new reason for refusal, having withdrawn its sole reason. It therefore unreasonably sought to defend the appeal, with vague and generalised assertions and a failure to produce evidence to substantiate its refusal.
4. The applicant further considers the Council failed to carry out diligent prior investigation, and then left it until the statement stage before conceding it was wrong. The Council then embarked upon a brand-new argument and wild speculation.
5. The Council also did not adopt a helpful approach and references in the evidence to use and a bedroom were not inconsistent. The applicant therefore seeks a full award of costs, or, in the alternative, up to the completion of the statement stage.
6. The Council's response is that it has not prolonged proceedings by introducing a new reason for refusal nor withdrawn a reason for refusal. In its statement, the Council questioned whether the 4 or 10-year rule was applicable given there was evidence about work carried out to provide a bedroom, which was inconsistent. Evidence was also provided after the Council made its decision, which could have been produced with the original application.

7. In terms of my assessment, it is clear that additional evidence was submitted to the Council following their refusal. This is not disputed by the applicant. The Council then confirmed in its statement that the structure was considered to be a building as a consequence.
8. Given the additional evidence following the refusal, it was reasonable and helpful of the Council to reconsider its position and then confirm that the structure was a building in its statement. As I do not have sufficient evidence as to this timeline, I am unable to conclude whether this could have reasonably been done sooner.
9. In any event, given the Council accepted the structure was a building, it brought into question the relevant time period for immunity, in respect of whether there had been an intervening use. Such matters were not relevant had the Council's position not reasonably changed owing to receipt of the additional evidence, albeit the reason for refusal did raise whether there had been a subsequent change of use.
10. I am mindful that the onus is firmly on the applicant in such appeals. It then appears to me the Council has not acted unreasonably because it has taken the opportunity to review its position in light of the additional evidence. That this brought about an additional query is also not unreasonable given the interplay between the different periods for immunity that then arose.
11. The Council also highlighted what it considered to be inconsistencies in the evidence, as it was entitled to do so, and this prompted the applicant to provide further additional evidence, meaning that for the purposes of my subsequent assessment, the burden of proof was satisfied.
12. I am therefore not persuaded that the Council has prolonged proceedings, made generalised assertions or otherwise acted unreasonably to cause the appeal to be brought, or in then defending the appeal. The Council also undertook a site visit, amongst other things, which demonstrates an appropriate level of diligence.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR