



Costs Decision

Site visit made on 23 July 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2024

Costs application in relation to Appeal Ref: APP/P0119/X/23/3332473 The Rosary, Chesley Hill, Siston, South Gloucestershire BS30 5NE

- 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 Mark Palmer for a full award of costs against South Gloucestershire Council.
 - The appeal was against the refusal of a certificate of lawful use or development to construct single storey storage building.
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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.
3. The applicant cites that there has been a lack of objective analysis by the Council as to the matter of whether the building would be used for incidental purposes, and that two examples have been provided of the Council considering larger buildings to be for incidental use. The Council's Delegated Report contains an assessment of whether or not the use of the building would be incidental. This is clearly a matter of planning judgement for the decisionmaker; however, this conclusion does appear to have been influenced by the perceived intentions of the applicant. There is reference to the rooms within the proposed building being easily converted to habitable spaces and those associated with a dwelling.
4. There is also reference to a previous appeal decision on the site which referred to the intentions of the applicant. These are matters unrelated to the consideration of an application for a lawful development certificate for a proposed development, which should be an objective assessment of the lawfulness of the proposal, not what could occur in the future. Should there be any material change to the development post-construction, which is a matter for consideration at that stage. The Council refers to the previous appeal decision being a material consideration in determination of the current appeal. I do not agree; a lawful development certificate is declaratory of lawfulness; past or possible future actions are irrelevant.
5. I note that two examples of other developments have been provided where the Council considered differently than in this case. While these details were provided at appeal stage, and so were not presented to the Council when it determined the application, they do indicate that the Council has been willing

to previously accept substantial buildings as being used for incidental purposes. I am keenly aware that the Council highlight that every case must be considered on its merits, nonetheless there must also be consistency in decision-making. The Council has failed to adequately justify the difference in its approach between the appeal case and the cited examples in any meaningful way. In this light, I find that on balance the Council has been unreasonable in its approach to the application for the lawful development certificate.

6. However, even without regard to the matters that I have referred to above, I consider it highly likely that the Council would still have refused the application for a certificate, based on its assessment of whether the proposal would be incidental or not. The relevant considerations within the Delegated Report point to the scheme not comprising development that is incidental to the main dwelling, and this is an assessment that I have agreed with when making my own decision. Consequently, I do not find that the applicant has been put to the unnecessary expense of pursuing the appeal.
7. For the reasons given above, while I find that there has been unreasonable behaviour, this has not resulted in unnecessary or wasted expense and an award of costs is therefore not warranted.

Martin Allen

INSPECTOR