
Costs Decisions

Hearing Held on 29 May 2024

Site visit made on 29 May 2024

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 October 2024

Costs application in relation to:

Appeal A Ref: APP/R3650/X/3333287 and

Appeal B Ref: APP/R3650/X/3337134

Land at Wrotham Hill Cottage, Wrotham Hill, Dunsfold GU8 4PA

- The applications are 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 applications are made by Mr Grant Marshall for a full award of costs against Waverley Borough Council.
 - The hearing was in connection with appeals against the refusal of certificates of lawful use or development for
Appeal A – the siting of a shipping container for use ancillary to the lawful use of the land; and
Appeal B – use of the first floor of the garage building for purposes ancillary to the residential use of Wrotham Hill Cottage.
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Decision

1. With regards to Appeal A: The application for an award of costs is refused.
2. With regards to Appeal B: The application for an award of costs is refused.

Preamble

3. 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.
4. There are, therefore, two tests to a costs application, both of which need to be passed. Firstly, that there has been unreasonable behaviour and, secondly, that this has led to unnecessary or wasted expense.

Costs in relation to Appeal A

The submissions for Grant Marshall

5. Mr Marshall says that the Council has acted unreasonably and this has led to unnecessary expense. He asks for a full award of costs against the Council.
6. He reiterates his belief that the container he proposed would not constitute development, and included a newspaper article by Jeremy Clarkson that supports this contention.
7. He made another application for a certificate of lawful development for a container that met the definition of a caravan. A certificate was issued by the

Council for this. He says that the decision was incompatible with that which forms the basis of Appeal A, as in one they say that the container would not be a building and in the other that it would be.

8. He drew my attention to an application for a certificate application for an identical container on another site, Council reference WA/2023/00634, that the Council approved on the day of the Hearing. In doing so, they reached a decision that was at odds with that which they made that led to this appeal. That the Council did not refer to this decision in the Hearing, knowing that it had been made, amounted to non-disclosure and deception that was unreasonable.
9. Lastly, he says that the Council failed to substantiate its reasoning.

The response by Waverley Borough Council

10. In response to whether it correctly applied case law, the Council said that it did and that this led to the refusal of the application.
11. The Council points to the wording in the newspaper article and that this supports its contention that there are occasions when planning permission would be needed to site a container on land. It makes the case that as the article refers to the siting of containers on agricultural land, there would be different factors to be taken into account.
12. The Council did not reply to Mr Marshall's point regarding its decision on WA/2023/00634. Instead, it referred to a decision relating to a container sited on agricultural land in North Warwickshire that arose in the Hearing.

Reasons

13. The framework for an assessment of whether something is a building is detailed in the court cases set out in my appeal decision letter. The tests there relate to its size, permanence and degree of attachment. The Council applied these tests and, as it was entitled to, reached the conclusion that the container was a building. I agreed with this reasoning, though, even had I not, if the Council's assessment had been carried out properly it still would not have amounted to unreasonable behaviour.
14. The newspaper article reflects what was said in the Counsel's Opinion, that the Appellant submitted with his appeal; each decision has to be made individually based on the facts of the case in the light of case law. This, again, is what the Council did.
15. I found the Council's reasoning for issuing a certificate for a container that met the definition of a caravan to be convoluted and confusing. However, as I said in my appeal decision, its reasoning with regards to the decision that forms the subject of the appeal before me was sound. It did not act unreasonably in that regard.
16. Whilst the Council did not refer to its decision in WA/2023/00634 in its response to the costs' application, I had sight of the Officer's report into it. It refers to the difference in the nature of that site compared to Wrotham Hill Cottage, and that this would impact on the permanence and degree of fixing to the land. The owner of that site wrote to me, setting out that the nature of the two areas of land were the same. Whilst the Appellant and landowner might

disagree with the Council's assessment, it was one that it was entitled to make. In the Appellant's appeal submissions, I was asked to visit that site so that I could assess any similarities between the two sites for myself. There was no need to do so, as I had reached my conclusion on the appeal proposal on the basis of the parties' submissions and what I saw at the appeal site. The Council also approached the applications on this individual, site-by-site basis.

17. It seems likely that the Council's officers attending the Hearing would have known that WA/2023/00634 was recommended for approval, even if they were not aware of its actual approval on the day of the Hearing. This might amount to unreasonable behaviour. However, it did not lead to unnecessary expense as the appeal would have proceeded in any event. Furthermore, it would not have made any difference to the decision that I reached.

Conclusion on Application A

18. For the above reasons, it has not been demonstrated that the Council's behaviour was unreasonable and led to unnecessary expense. Therefore, the claim for costs fails.

Costs in relation to Appeal B

The submissions for Grant Marshall

19. The claimant alleges that the Council did not accept that the owner/occupier of the land had told the truth in her letter in support of the application. He went on to say that Government guidance is such that as the Council, having no evidence of its own, should have issued the certificate on the basis of that letter. He points to a lack of consistency by the Council, that had issued a certificate on an application for a dovecote, Council reference WA/2024/00471, on the basis of a single letter in support.
20. He further claims that the lack of a site visit by the Council was wrong and, had the Council visited, it would have seen evidence that would have shown the required 10-year period of use.
21. Overall, he claims that the Council's actions were unreasonable and led to unnecessary and wasted expense. He seeks a full award of costs.

The response by Waverley Borough Council

22. In response, the Council said that it gave reasoning for its decision in its Officer report, and subsequently its appeal statement. Whilst the Appellant might not agree with its fact and degree findings, this did not make the decision unreasonable. In the Hearing, the Council made it clear that its decision was not based on a view that the author of a letter in support of the application had not been telling the truth, but on its view that the evidence was not precise and unambiguous.
23. In relation to the criticism of a lack of a site visit, it points to there being no statutory requirement for one and that, given the information it had before it, there was no necessity to visit the site.
24. Lastly, the Council says that the evidence it had available for WA/2024/00471 was materially different than that upon which it determined the appeal application. Although I have not seen it, the Council says that application included what it calls a "statutory declared statement" and information in the

Council's possession from other applications pointed to that development being lawful.

Reasons

25. Mr Marshall's claim that Government guidance states that the letter from the owner/occupier of the land should have led to the certificate being issued, as the Council had no evidence of its own, is wrong. Whilst case law¹ is clear that evidence should not be dismissed simply because it has not been corroborated, where a planning authority has no evidence of its own to counter what is claimed, those claims have to be "precise and unambiguous".
26. As I set out in my decision on the appeal, the owner/occupier's evidence amounted to a single letter that did not provide: a date for the commencement of the claimed use; substantive evidence of continuous use; nor evidence as to whether the claimed use was as a self-contained unit separate to the main house or as an adjunct to it. It was imprecise and ambiguous. The Council's actions did not indicate, explicitly or implicitly, that it accused the owner/occupier of not telling the truth. As the Council set out, it was merely making a judgement on the nature of the evidence submitted.
27. The Council's submission that it had evidence of a materially different nature when determining application WA/2024/00471 has not been countered by the Appellant. I therefore take it to be the case. The evidence shows that, there, the Council determined that the evidence before it proved the case on the balance of probability.
28. There is no statutory requirement for a planning authority to visit a site for a certificate application. This point was made to the Appellant in a previous application for costs on this matter. That application related to two withdrawn appeals². It was determined by the Costs and Decisions Team at The Planning Inspectorate (PINS) and the application was refused. That is a matter that the Appellant informed me he was disputing with PINS.
29. The application before me states that the Council did not take seriously the Appellant's complaint that the site should have been visited before a decision was reached on the certificate application. This, he says, would have led to the certificate being issued. This resulted in "forcing the appellant to go to appeal in an attempt to have this criticism of the Council's behaviour judged by a suitably qualified Inspector, rather than by a Costs Officer [at PINS]".
30. Notwithstanding the position held by the person dealing with the earlier costs' application, their statement that there is no statutory requirement for a site visit has not been challenged. In this case, a visit to the site to see, for example, the deterioration of lino that was guaranteed for 10 years would not have demonstrated ten years continuous use of the first floor. It would not, neither of itself nor when taken in conjunction with the spartan evidence put forward in the owner/occupier's letter, have led to a certificate being issued. I do not find that it would even have been "helpful", as suggested by the Appellant's agent in the Hearing.
31. That the Council undertook a site visit for the same proposal on another occasion was a matter for the Council. It said that this was undertaken as they

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

² APP/R3650/X/22/3311558 and APP/R3650/X/22/3315023

had been “asked many times” and, in response to my question in the Hearing “Did it take matters forward?” the answer was “nothing [was] gained”. Its point that a site visit in the circumstances only showed the use on the day and not for 10 years was well-made.

Conclusion on Application B

32. For the above reasons, it has not been demonstrated that the Council’s behaviour was unreasonable and, therefore, the claim for costs fails.

Roy Curnow

Inspector