



Costs Decision

Site visit made on 16 November 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Costs application in relation to Appeal A Ref: APP/X1545/X/22/3298701 The Old Dairy, Broad Street Green Road, Great Totham, CM9 8NX

- 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 JAP Contracts for a full award of costs against Maldon District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is described as 'Use of building as office purposes'.
-

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. Awards against a party may be either procedural or substantive.
3. The PPG advises that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal. Examples of unreasonable behaviour include a lack of co-operation with the other party. The PPG also advises local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example by preventing or delaying development which should clearly be permitted.
4. The main points of the claimant's case are that the respondent was unreasonable for failing to consider the specific nature of the application and altering the terms of the application, for failing to contact the appellant regarding the extent and nature of any evidence and for not having visited the site. The claim is therefore procedural and substantive.
5. The respondent refused the application to grant a certificate of lawful use or development (the LDC) on the basis that the applicant's evidence was not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
6. In a LDC appeal, the onus is on the applicant to make out their case to the standard of the balance of probabilities, the burden of proof in such an application is firmly on the applicant. The applicant is best placed to understand what evidence it has available to it to substantiate its case and is responsible for providing sufficient information to support an application. There

is no duty on the respondent to explain what evidence might have been satisfactory nor is there an obligation on the respondent to provide evidence of a contradictory nature. In an LDC application, the PPG sets out that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

7. Similarly, there is no obligation in respect of an LDC application for a site visit to be undertaken. In this instance, had a visit been carried out, any observations would have provided only a snapshot of time whereas the applicant, must demonstrate, on the balance of probability, that the use of the appeal property as an office (formerly Use Class B1(a), now Use Class E(g)(i) of Part A, Schedule 2 of the Town and Country Planning (Use Classes) Order 1987 (as amended)) has continued, without significant interruption, for a period of at least ten years before the date of the LDC application. In any event, the relevant date for determination of the LDC application is the date on which the application is made and thus what has occurred after that date and any observations made at a site visit would have been irrelevant.
8. It is the applicant's view that the respondent has failed to consider the specific nature of the application in altering the terms of the application and '*failing to consider that the breach of condition 3 has been undertaken since 2009 and throughout the period claimed*'. However, as can be seen from my decision letter, I have found that the applicant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that a material change of use of the building for office purposes as Use Class B1(a) began on or before the 31 August 2011 and continued without significant interruption for at least ten years thereafter. It follows that the Council has not prevented or delayed development which should clearly be permitted and so the appeal would still have been necessary.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated. An award of costs is therefore not justified.

E Brownless

INSPECTOR