



Costs Decision

Site visit made on 29 October 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Costs application in relation to Appeal Ref: APP/V2635/W/23/3330378 Manor House, School Road, Walpole Highway PE14 7QQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Hillier for a full award of costs against King's Lynn and West Norfolk Borough Council.
- The appeal was against the refusal of planning permission for a permeable tarmac tennis court and pavilion.

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 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 costs application has been made in writing. In summary, the applicant considers that the respondent acted unreasonably because they asserted that the evidence provided was not sufficient to demonstrate the use of the site as residential garden but refused to give any indication of how the evidence was insufficient or what further evidence might be necessary to demonstrate there had been a change of use. It was also suggested that a lawful development certificate application should be submitted but there is no legal requirement to do this nor is it necessary to do so before applying for planning permission. The respondent provided no explanation or justification of the actual harm that would be caused from encroachment into the countryside, and no site visit was made.
4. The respondent contends that they offered positive and proactive advice to the applicant including suggesting that an application for a lawful development certificate was made. Furthermore, they set out their position on the evidence that had been submitted in terms of it having not been demonstrated that a material change of use had occurred. In terms of the assessment of the planning application, the respondent considers that they clearly set out the harm that would arise, including in terms of encroachment. A site visit was carried out and photographs were taken.
5. The position set out by the respondent is that there was not a lack of evidence provided by the applicant, rather that it was the case that the use which was evidenced to have taken place was not considered to be a material change of use that had persisted for a continuous period of 10 years. In their Planning Officer Report they refer to a periodic use for private recreation and in their

appeal submissions they have provided aerial photographs which they consider support their case. They could have chosen to provide a more detailed reasoning to explain their conclusions and/or requested further information from the applicant. But to do so would have been akin to the determination of a certificate for lawful use application and not a planning application. In that context it is not unreasonable that the respondent chose not to engage in any depth on the matter of the lawful use of the land, in particular as it had been open to the applicant to have already resolved that matter under section 191 of The Town and Country Planning Act 1990, prior to submitting the planning application. It was also not unreasonable that the respondent suggested that an application for a lawful development certificate application be made.

6. In terms of the harm that would be caused, this flows from the position on the lawful use of the land, or rather the uncertainty regarding it. To my mind little explanation is needed as to the harm that would be caused by building a tennis court and pavilion on land outside of the defined development limits which is permitted only for agricultural use. The respondent refers to it as an unjustified encroachment into, and the domestication of, the countryside. This self-evidently encapsulates the harm that would occur, alongside the conflict with the strategic policies of the development plan which have a broader aim of regulating new development in rural areas. In the latter respect, the harm is not dependent on how visible development is or is not. There was, therefore, no unreasonable behaviour on this ground either.
7. It would appear evident that the respondent did undertake a site visit. Whether the appellant was aware of that visit having taken place or not is not a matter which has any bearing on the outcome of this costs decision.
8. In conclusion, for the reasons I have set out unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Graham Wraight

INSPECTOR