



Costs Decision

Inquiry held on 23 October 2024

Site visit made on 23 October 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2024

Costs application in relation to Appeal Ref: APP/P1615/X/24/3342313 Ishkara, Dragon Fires, Grange Court Road, Adsett, Westbury on Severn, Gloucestershire GL14 1PJ

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mark Hughes for a full award of costs against Forest of Dean District Council.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for "the use and occupancy of a bungalow, originally granted permission for holiday accommodation, as a permanent dwelling".
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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 PPG provides examples of unreasonable behaviour by local planning authorities. These include the failure to produce evidence to substantiate reasons for refusal and making vague, generalised or inaccurate assertions unsupported by objective analysis as well as preventing or delaying development that should have been permitted.
4. The applicant considers that the Council acted unreasonably for several reasons. Firstly, the applicant contends that the Council did not make proper investigations in relation to the application for a lawful development certificate (LDC). However, it is clear from the officer's report and subsequent appeal statements that the Council consulted other departments including Council Tax and Housing. There is also no evidence to suggest that the Council was unaware of the existence of the appeal property "Ishkara".
5. The applicant also alleges that the Council required the evidence submitted in support of the LDC application to be proven "beyond reasonable doubt", instead of meeting the required standard of "on the balance of probabilities". Furthermore, the applicant alleges that the Council found that the non-payment of Council Tax alone was enough to defeat the LDC application.
6. The Council's single reason for refusal was that "*Considering that the Local Planning Authority has evidence that no council tax has been paid at the*

property and the information provided by the applicant in support is deemed to be insufficiently precise [my emphasis] to enable the LPA to conclude that on the balance of probabilities, [my emphasis] the building has been occupied as an independent dwellinghouse in breach of planning permission P1384/01/FUL for at least a continuous period of 10 years, the building is not immune from enforcement action and must be retained for holiday purposes".

7. It is clear from the Council's decision notice, and Officer's report, that the Council assessed the evidence and concluded that, in their view, it did not demonstrate on the balance of probabilities that the property had been used in breach of condition e) of planning permission P.1384/01 for the necessary period. Similarly, it is clear that whilst the Council took the non-payment of Council Tax into consideration, other factors were also taken into account including the Council's view that the submitted information was insufficiently precise.
8. In determining the application, I do not consider that the Council made vague, generalised, or inaccurate assertions which were unsupported by any objective analysis. Whilst I have not agreed with the Council in terms of their assessment of whether the evidence met the standard of the balance of probabilities, they had reasonable questions about the evidence. This includes evidence relating to the housing benefit that was paid to a tenant of the property, with the date on which this was paid appearing to be inconsistent with the appellant's recollection of when the tenant concerned resided at the appeal property. The fact that the parties disagreed on these matters does not in itself demonstrate unreasonable behaviour.
9. Finally, the applicant's claims that the Council were not co-operative or failed to supply requested information that was in their possession have not been supported by any tangible evidence, and I have no information before me to suggest that the Council acted unreasonably in that regard.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Jones

INSPECTOR