
Costs Decision

Site visit made on 22 October 2024

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Costs application in relation to Appeal A Ref: APP/N0410/X/24/3342315

Cliveden Stud House, Cliveden Road, Taplow, Buckinghamshire SL6 0HL

- 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 Buckinghamshire Council for a full award of costs against Mr Mahadevan Krishnamohan.
 - The appeal was against the refusal of a certificate of lawful use or development for the erection of the dwellinghouse known as Cliveden Stud House.
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Costs application in relation to Appeal B Ref: APP/N0410/X/24/3343710

Cliveden Stud House, Cliveden Road, Taplow, Buckinghamshire SL6 0HL

- 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 Buckinghamshire Council for a full award of costs against Mr Mahadevan Krishnamohan.
 - The appeal was against the refusal of a certificate of lawful use or development for the use of Cliveden Stud House otherwise than in compliance with the conditions attached to the outline planning permission with reference number ER/1466/68.
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Decision

1. The application for an award of costs is refused in so far as it relates to Appeal A. The application for an award of costs is allowed in so far as it relates to Appeal B in the terms set out below.

The submissions

2. The reasons given by the costs applicant (the Council) for the costs application are summarised as follows:
 - The case made by the appellant in both appeals is the same as that made on the recent appeal¹, which was dismissed. The additional evidence relied on cannot influence whether the dwelling has been constructed in accordance with the approved plans.
 - The appellant has, therefore, behaved unreasonably in making these appeals.
3. I have had regard to the appellant's response in reaching my decision.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance on Appeals (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the

¹ Appeal reference APP/N0410/X/22/3310567

- party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. With this in mind, I acknowledge that the documentary evidence submitted with the LDC applications subject of Appeal A and Appeal B might well be broadly the same as that submitted with the previous LDC application and subsequent appeal (reference APP/N0410/X/22/3310567), which I will refer to hereon in as 'the 2024 Appeal'. However, there is a discernible difference in the case made by the appellant on Appeal A when compared with that made on the 2024 Appeal.
 6. In that case, the appellant did not dispute that planning permission had been granted for development by reason of the outline planning application reference ER/1466/68. Their case was that the dwellinghouse known as Cliveden Stud House (the Dwellinghouse) did not have the benefit of that permission. In the case of Appeal A, the appellant still maintained their position, that the development was constructed in breach of planning control. However, they made the case that the outline application ER/1466/68 was invalid and, as such, there was no outline planning permission. It is for this reason that the appellant suggested under Appeal A that the development does not have the benefit of planning permission. Whether or not this was correct was the main consideration in Appeal A.
 7. There were a number of matters relevant to my determination of Appeal A that had not been considered by the previous Inspector in the 2024 Appeal. These included the principal matter of whether or not the ER/1466/68 outline application was, on the balance of probability, accompanied by a plan sufficient to identify the land to which it related for the purposes of the validation of the application. The appellant's case and the matters considered on Appeal A were not, therefore, a repeat of those relevant to the 2024 Appeal.
 8. In view of the above, I cannot regard the appellant as having demonstrated unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process by making Appeal A. I cannot, however, conclude the same with regard to Appeal B.
 9. I note that the LDC application subject of Appeal B was made prior to the determination of the 2024 Appeal. The description of the matter for which the LDC was sought for the 2024 Appeal is different to that stated on Appeal B. However, in the statement accompanying the Appeal B application the appellant identifies two propositions that were the subject of the 2024 Appeal application and confirms that the Appeal B application 'is limited to the first proposition'. They say that the only variation to their case is to 'take into account' what the appellant says were the comments of the Council's planning officer in 2022. The appellant suggests that the Council officer indicated that 'the Council were satisfied that the Outline Consent had not been implemented'.
 10. I have noted in my decisions on these appeals that these comments are not recorded in writing; that the evidence of this comes from an email from the appellant which appears to relate to the conversation with the Council officer and states what the writer has understood to have been said by the Council officer.
 11. Even if the appellant had correctly recorded the Council officer's comments, I have said that it is clear from the 2024 Appeal decision that these comments were not aligned with the case made by the Council in that appeal. It is clear from the 2024 Appeal decision that the Council's case was that the Dwellinghouse was

constructed with the benefit of the ER/1466/68 outline planning permission. Indeed, I have no doubt that this, as the Council's official position, would have been clear to the appellant even prior to the issue of the 2024 Appeal decision.

12. The correspondence between the appellant and the Council in 2022 might well have provided a reason for the submission of the Appeal B application. Indeed, even after the 2024 Appeal decision, the appellant is entitled to submit further LDC applications relating to the same development.
13. However, with regard to the appeal process, the PPG informs that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. The PPG informs that this may occur when 'the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period'. This advice from the PPG is entirely applicable to the process on an LDC appeal where there has been a recent appeal decision in relation to the same development.
14. The appellant says that Appeal B was made in order to provide me with 'an alternative option for dealing with the lawfulness of the property in question'. The appellant suggests that there are only two options, the first of which is that considered under Appeal A. The second suggested option is to reach a conclusion that would have been contrary to that of the previous Inspector in the 2024 Appeal. The appellant has, however, made the same case on Appeal B as was made (i.e. the first proposition) on the 2024 Appeal. Furthermore, I can identify no material change in the relevant circumstances between the 2024 Appeal decision and the making of Appeal B.
15. I have had regard to the additional evidence referred to by the appellant in Appeal B (i.e. the exchange between the appellant and the Council in 2022). However, for the reasons given above, this falls significantly short of providing a robust justification for making an appeal on grounds that are substantially the same as those made on the 2024 Appeal.
16. Having regard to all of the above, regardless of my conclusions on Appeal A, I can find no reason to reach a different conclusion on Appeal B to that made by the previous Inspector on the 2024 Appeal. There is little logic in the suggested reasons for making Appeal B. I find as such, mindful that the appellant sought the assistance of a solicitor in making their appeals. All things considered, I conclude that, by making Appeal B, the appellant has demonstrated unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process.

Conclusions

17. With regard to Appeal A, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.
18. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted with regard to Appeal B.

Costs Order

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Mahadevan Krishnamohan shall pay to Buckinghamshire Council, the costs of the appeal proceedings described in the heading of this decision as Appeal B; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Mr Mahadevan Krishnamohan, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR