



Costs Decision

Site visit made on 12 November 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Costs application in relation to Appeal Ref: APP/K2420/X/23/3320892 Kingfisher House, 6 Kingfisher Way, Sheepy Parva, Leicestershire CV9 3SW

- 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 Mr Laurent Troger and Mrs Nicki Crossland for a full award of costs against Hinckley and Bosworth Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the commencement of the construction of a greenhouse (incidental outbuilding).
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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 applicants claim that the certificate of lawful use or development would have been granted and the appeal avoided but for the unreasonable behaviour of the Council. The applicants identify the following actions by the Council to amount to unreasonable behaviour:
 - Prior to the commencement of the construction of the greenhouse, the applicants contacted the Council to enquire whether planning permission was required. Upon completing a “self-assessment form” the Council advised that planning permission was not required.
 - Inconsistent reason for refusal – the reason for refusal cites insufficient information being provided, however it is apparent from the officer report that it was not the case.
 - The Council acted contrary to, or did not follow, well-established case law
 - The Council carried out an unnecessary consultation with the Environment Agency (EA).
4. The Council’s response to the “self-assessment form” is in effect a form of “pre-application advice” where the Council provides a view on whether it would be likely that a planning application would be supported, or as in this case, whether planning permission was required in the first place. However, whilst I accept that the Council’s response advised that planning permission would not be required for the

outbuilding, this would have been entirely dependant upon the information provided by the applicants. In any event, the advice provided by the Council is not binding.

5. The reason for refusal given in the decision notice was “*The information included in the application for a Certificate of Lawful Existing Development has not provided sufficient evidence to demonstrate that the construction of an outbuilding in Sheepy Parva is within the curtilage of the residential building.....*”. It is clear that the application was not refused solely for “insufficient information being provided” but that the information provided was, in the Council’s view, not sufficient to demonstrate that the outbuilding was within the curtilage of the dwelling. That is a matter of planning judgement for the decision maker and does not render the reason for refusal as “inconsistent”.
6. In terms of how the Council assessed the evidence available to form its opinion on the extent of the curtilage, the Council was able to substantiate its case and relevant caselaw was referred to. This relevant caselaw was referred to in the Council’s statement of case, including the “Stephenson factors”. I also find that the existing use of the land was considered by the Council, something that they acknowledged was currently being used “as domestic garden”.
7. However, the existing use of the land was only one factor that needed to be considered when assessing the extent of the curtilage. It was clear from the submissions that in this case the Council attributed more weight to other factors, such as the physical layout of the building and land, when reaching their conclusion. Given that the extent of the curtilage of a building is a question of fact and degree, and therefore a matter for the decision maker, the Council were entitled to come to a different view to the appellants, and I do not view its actions as acting contrary to, or not following, the well-established caselaw referred to.
8. The Council were entitled to carry out a consultation on the LDC application if they believed that third parties may possess relevant information. Whilst I am unclear what information the EA could have held that would have assisted in determining the extent of the curtilage of the dwellinghouse, in my view the consultation had no bearing on the outcome of the application and the appeal would not have been avoided. Consequently, whilst this consultation may not have been required, it did not result in any unnecessary or wasted expense being incurred by the applicants.
9. Finally, the applicants allege that the Council attempted to deter them from making an appeal against any refusal of the LDC application by advising that the Council would seek costs if an appeal was made. The Council refute this allegation and instead state that in March 2023 they advised that they “May seek costs”. The applicants have not disputed the Council’s version of events, which to my mind represents the Council being transparent and does not amount to unreasonable behaviour.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and a full award of costs is not warranted.

David Jones

INSPECTOR