



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 Hinckley and Bosworth Borough Council for a full award of costs against Mr Laurent Troger and Mrs Nicki Crossland.
 - 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 Council's costs claim is primarily in relation to the appellants interpretation of relevant case law. In the Council's view, the appellants deliberately misinterpreted case law to support their position. Both parties referred to an extensive list of appeal decisions and case law in their submissions including, amongst others, *Hiley*¹, *Calderdale*², and *O'Flynn*³. The appellants discussed and sought to apply the relevant caselaw including the "Stephenson" factors, which the parties agreed should be considered when assessing curtilage.
4. It is clear that the appellants attributed more weight to certain factors than others and came to a different overall conclusion to the Council on the extent of the curtilage. In particular, the parties took opposite views on the physical layout of the land and building and whether the tributary was a significant feature in that layout. Nevertheless, I find nothing to suggest that the appellants deliberately sought to misinterpret the relevant case law.
5. This was a case where I was required to examine the submitted factual evidence, planning and site history, and apply relevant law or judicial authority to the circumstances involved, which required planning judgement. Ultimately, I did not agree with the appellants assessment of the relevant factors and their overall planning judgement. However, I am satisfied that the appellants were able to

¹ *Hiley v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 1289 (Admin)

² *Attorney General, ex r Sutcliffe v Calderdale Borough Council* [1983] 46 P&CR 399

³ *O'Flynn v SSCLG & Warwick District Council* [2016] EWHC 2984

substantiate their case and the fact that they reached a different conclusion does not amount to unreasonable behaviour.

6. I acknowledge that the Council informed the appellants in advance of the LDC application being made that they considered the proposed greenhouse to be located outside of the curtilage of the dwelling. Nonetheless, the extent of the curtilage of a building is a question of fact and degree, and it is therefore a matter for the decision maker, subject to the normal principle of public law. Consequently, the appellants did not have to accept the Council's opinion and were entitled to form a different view.

Conclusion

7. 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