



Costs Decision

Site visit made on 7 January 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2025

Costs application in relation to Appeal Ref: APP/B0230/X/23/3323624 163 Barton Road , Luton, LU3 2BN

- 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 Samir Riaz for a full award of costs against Luton Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development for a change of use from a garage (incidental use) to ancillary (some primary accommodation).
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Decision

1. The application for an award of costs is refused.

The submissions

2. The reasons given by the costs applicant (i.e. the appellant) for the costs application are summarised as follows:
 - The Council did not carry out a site visit;
 - The Council failed to consider the evidence submitted;
 - The Council failed to determine the application based on what had been applied for;
 - The Council have acted contrary to well-established case law; and
 - There has been poor case management on the part of the Council.
3. I have had regard to the Council's response in reaching my decision.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance on Appeals 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.
5. I deal first with the matter that was the subject of the application for a certificate of lawful use or development (LDC), which is taken from the description given in the LDC application form. It will be noted from my decision that there is ambiguity and some contradiction in the LDC application form description. It will also be noted that the documents that accompanied the application were of little assistance in clarifying how the building in question and the wider site was used on the date the LDC application was made. In view of this, I can find no fault on the part of the

Council in its approach to the matter for which the LDC was sought and in its determination of the application.

6. Turning to the relevant case law, the Council have given appropriate weight to this in the officer report. Whilst I cannot entirely agree with its commentary on 'ancillary accommodation' and a 'granny annexe', I do not regard it as having acted contrary to the case law considered. I am satisfied that it has applied the correct test of the evidence and that it has had regard to the relevant national guidance in reaching its decision.
7. In particular, whilst the Council has considered *Uttlesford District Council v Secretary of State for the Environment and White* [1992] JPL 171, which is relevant to dwellinghouses and the use of outbuildings, it does not go on to reach a conclusion that is contrary to this case law. The Council does not conclude that the building is a self-contained unit of residential accommodation (i.e. a separate planning unit used as a dwellinghouse) and, therefore, not lawful for this reason. Instead, the Council's conclusions are that the submitted information is not sufficient to demonstrate that the use of the building, as described by the appellant, is lawful, whether that be a use that is incidental (or ancillary) to the use of the wider appeal site or a use that is part and parcel of it. As I have reached the same conclusion in my determination of the appeal, I cannot regard the Council to have behaved unreasonably in its consideration of the evidence submitted with the LDC application.
8. The appellant suggests that there has been poor case management on the part of the Council by referring to the enforcement investigation that appears to precede the LDC application. However, the Council's conclusions on the LDC application do not appear to contradict what the Council say were its conclusions on the enforcement investigation. As such, I cannot find there to have been poor case management, as suggested by the appellant.
9. The Council say that it made efforts to inspect the property before its determination of the application. It also says that it determined the application, having the benefit of the enforcement officer's site inspection in January 2023, not long before the application was made. There is no suggestion that there was a substantial difference in the appearance of the building and the site between the time of the enforcement officer's visit and the time the LDC application was made.
10. I acknowledge that the Council's reference to the use of No 163 for 'non-residential purposes' was not raised prior to the appeal and not via the appropriate means (i.e. it was mentioned in the Council's response to the costs application and not in an appeal statement). However, the appeal timetable was such that the appellant would have had the opportunity to respond to this point in their appeal statement. Nevertheless, I acknowledge that the Council might well have mentioned this in the officer's report, had it undertaken a detailed site visit.
11. Whilst I consider a site visit to be an important part of the determination process in a case such as this, I cannot regard the lack of a detailed inspection of the building in question and the site to amount to unreasonable behaviour in this case. The Council had the benefit of the enforcement site visit not long before the LDC application was made. Furthermore, the lack of a detailed site inspection following the submission of the application would not have resulted in a different outcome and the appeal being avoided. The LDC application was refused because the

appellant failed to discharge the burden of proof that is upon them. A site visit would not have changed this.

12. Having regard to all of the above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

J Moss

INSPECTOR