
Costs Decision

Site visit made on 18 February 2025

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2025

Costs application in relation to Appeal Ref: APP/E2205/X/23/3329429 Malthouse Farm, Daniel's Water, Great Chart, Ashford, Kent TN26 1JY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Michael Stockley for a full award of costs against Ashford Borough Council.
 - The appeal was against the Council's decision to refuse to issue a certificate of lawful use or development for the use of an outbuilding as an independent dwelling.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council behaved unreasonably in that the application was refused without any reliable counter-evidence to, what he describes as '*cogent evidence which met the evidential test of demonstrating that on the balance of probabilities the use had been proven.*'
4. An award for full costs is claimed on both procedural and substantive grounds.
5. The essence of the claim is that the original decision notice, issued on 23 August 2023, was then followed up with a second decision notice on 8 September 2023. The former had erroneously referred to s172B(3) of the 1990 Act, as amended. Although the second decision issued remained unchanged, insofar as the Council declined to issue a lawful development certificate, a refusal reason was included which specifically made reference to s171B(3) in that the four year immunity bar did not apply to the garden area surrounding the outbuilding.
6. In the judgement of *R v Arun District Council, ex parte Fowler* [1997] the High Court held that it was lawful for a planning authority to issue a replacement certificate of lawfulness as it had not changed the nature or the effect of the decision. In the current case, although it involved instances where a lawful development certificate (LDC) application was refused, the principle is the same.

7. Although I found that the outbuilding's use as a self-contained residential unit of accommodation had acquired immunity from planning control – and the description on the application form involves only the '*use as an independent dwelling*' – the site plan submitted alongside the application was incorrect in that it was too widely drawn. I have amended the plan, accordingly, but the Council, in reaching its decision, took the plan at face value. The fact that the Council also did not consider the evidence to be precise or unambiguous – and I have acknowledged that the case was not wholly straightforward – only compounded the situation and it would be unfair to criticise the Council for its approach.
8. I would consider that the main reason for reissue was to rectify the reference to the wrong section of the 1990 Act. This may have been a typographical error, but I give little weight to the applicant objecting to the second decision notice. In my view, in terms of materiality, this changed nothing.
9. I have dealt with the issue of 'concealment', referred to by both parties, in my main decision letter.
10. The purpose of the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken. Accordingly, in the event of an appeal I am required to consider any relevant fresh evidence advanced including where this evidence was not put forward at the application stage. As such, I can say with certainty that, in the face of the original decision notice issued, my decision would not have been different. On the basis of the evidence before me I would still have altered the red-line and granted the LDC.
11. In the circumstances I find that the Council acted correctly, both procedurally and substantively.
12. For the reasons given above, I am not of the view that the appeal could have been avoided. Accordingly, I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
13. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR