



Costs Decisions

Site visit made on 25 March 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Costs applications in relation to:

Appeal A Ref: APP/Y3940/X/24/3354233 (LDC)

Secret Valley, 35 The Fairway, Devizes, Wiltshire SN10 5DX

- 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 Matthew North for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of a certificate of lawful use or development for use as residential garden incidental to the dwelling house.
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Appeal B Ref: APP/Y3940/W/24/3350844 (S78)

Secret Valley, 35 The Fairway, Devizes, Wiltshire SN10 5DX

- 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 Matthew North for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for the retention of ancillary utility building containing garden room and tractor/mower store.
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APP/Y3940/C/24/3355189 (Appeal C)

APP/Y3940/C/24/3355190 (Appeal D)

Secret Valley, 25 The Fairway, Devizes, Wiltshire SN10 5DX

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mr Matthew North (Appeal C) and Miss Amy Towill (Appeal D) for a full award of costs against Wiltshire Council.
 - The appeal was against an enforcement notice alleging erection of an outbuilding.
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Decisions

1. The applications for an award of costs are 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. I should highlight that costs cannot be awarded for unnecessary or wasted expense incurred during the original application process.
3. For each of the appeals, the applicant says the Council has acted unreasonably, both procedurally and substantively.

Appeal A (LDC Appeal) and Appeal B (S78 Appeal)

4. For both the s78 appeal and the LDC appeal, the applicant alleges similar unreasonable behaviour. In particular, the applicant says the Council withheld background papers which were used to determine the application; the Council refused to engage with them during the negotiation stage of the application; and that the Council assessed a different proposal than requested by the applicant on the application form.
5. The “background papers” referred to by the applicant appear to relate to the enforcement file requested from the Council. Given the sensitivity of certain information within an enforcement file, it would not be unreasonable (nor uncommon) for its content, or parts of its content, to be withheld. Even so, the Council says all relevant documents and decisions referred to in its determination of the applications were clearly set out in its delegated reports and were publicly accessible. Notwithstanding this position, if the Council had withheld documents, this behaviour is unlikely to have negated the need for the appeals. This means the time and expense incurred by the applicant in the appeals process was not unnecessary or wasted.
6. In terms of the s78 application, the Council says it was satisfied it had sufficient information from the applicant to determine the application, and there is little to suggest any period of negotiation would have led the Council to reach a different conclusion. Indeed, the impact of a development can often be more readily assessed when an application is retrospective, and negotiation may be of limited benefit in such circumstances. In this instance, an appeal was most likely inevitable given the Council's position regarding the proposal, and so the time and expense incurred by the applicant in the appeals process was again not wasted or unnecessary.
7. Following a request from the Council, the applicant amended their description of development to encompass a material change of use to curtilage. As set out in my decision, curtilage is not a use of land and it should not have formed part of the development description. It was therefore unreasonable for the Council to request this change to the development description.
8. This amended description meant the applicant needed to submit evidence with regard to the curtilage of the dwelling. However, given this issue was relevant to all of the appeals, the time and expense incurred by the applicant on this issue was not unnecessary or wasted. In other words, even if the Council had not requested this amendment to the development description, the applicant would still need to have provided the same curtilage evidence.
9. The development plan policies listed in the s78 decision notice are relevant to the protection of landscape character and design quality, issues which are pertinent to the acceptability of the outbuilding. As such, the Council did not misapply policy in this regard.
10. In terms of the LDC application, s191(4) of the 1990 Act says:

If, on application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application [...], they shall issue a certificate to that effect, and in any other case they shall refuse the application.

11. The burden is clearly on the applicant to provide sufficient evidence to demonstrate the lawfulness of the use sought. Otherwise, the Council is entitled to refuse the application in accordance with the statutory provisions outlined above. The Council was under no obligation to negotiate or seek further information from the applicant where gaps in their evidence had been identified, nor was it unreasonable for them not to do this.
12. The evidential burden for an LDC application is the balance of probability. It is apparent that Council officers did not always apply this test correctly during the course of the application, noting references to “*in all probabilities*”. Whilst this turn of phrase is inaccurate, I do not consider the Council’s conclusion would have been any different if assessing the evidence on the correct legal test. Again, this means the Council’s behaviour has not resulted in wasted or unnecessary expense.
13. Whilst I have agreed with the applicant that the Council’s refusal to issue the LDC was not well-founded, it was not unreasonable for the Council to reach a different conclusion. Indeed, assessment of LDC applications is based on planning judgement, and the Council was entitled to conclude the applicant’s evidence was not sufficiently precise and unambiguous to demonstrate lawful use of the appeal site as residential garden.
14. At paragraph 2.4 of the applicant’s statement submitted in support of the LDC application, they say that they look “*to establish that use of the land as residential garden incidental to the dwelling is lawful through time served as usage*”. It is therefore an implicit part of the applicant’s case that a change of use may have occurred at some point, as the time limits prescribed under s171B of the 1990 Act are based upon a breach of planning having occurred. It was therefore reasonable for the Council to assess the LDC application on this basis.
15. The applicant raises a number of other concerns regarding the appeal applications. These include validation of the s78 application, the Council’s Scheme of Delegation, the authority of officers to determine the appeals, and the Council’s description of land use with regard to the LDC application. However, none of these factors are likely to have altered the overall outcome of either application. This means even if the applicant was able to demonstrate unreasonable behaviour in respect of these points, such behaviour would not have directly led to unnecessary or wasted expense in the appeals process.

Appeals C and D (Enforcement Appeals)

16. The enforcement appeals were brought on grounds (b), (c) and (f), each of which have failed: the breach alleged in the notice had occurred as a matter of fact and constituted a breach of planning control; the requirements of the notice were also not excessive, and only went so far as to remedy the breach. Substantively, the Council’s reasoning for issuing the enforcement notice was therefore reasonable.
17. The applicant raises several concerns with the Planning Contravention Notices served upon them. Such concerns relate to the authority for service, meeting dates and registration on the planning register. Any such issues have not caused unnecessary or wasted expense in the appeals process, as the appeals would not have been avoided as a result.
18. The applicant says the Council failed to engage with them positively prior to the enforcement notice being issued. In particular, the applicant says the Council failed

to respond to emails and meeting requests and did not respond to the “*reconciliation proposal*” set out in their response to the second PCN.

19. However, once the alleged breach had been identified, the Council invited applications from the applicant to remedy the breach. The applicant was therefore afforded the opportunity to regularise the breach, before formal enforcement action was pursued. This reflects the spirit of early engagement protocols set out in the Council’s own enforcement strategy and PPG. Whilst the Council’s enforcement strategy says such applications will be invited “*where there is a reasonable prospect of obtaining permission*”, this does not mean permission will be granted. Indeed, a development or lawfulness of use can only be properly assessed upon submission of a formal application.
20. As with the s78 Appeal, the development plan policies listed in the enforcement notice are relevant to the protection of landscape character and design quality, issues which are pertinent to the acceptability of the outbuilding.
21. In terms of considerations relating to curtilage, the Council’s messaging and advice to the applicant appears to have been inconsistent at times. However, the extent of the appeal site’s curtilage was a fundamental factor when determining whether the outbuilding was permitted development. This issue would therefore have formed a necessary part of the applicant’s appeal submissions, irrespective of the Council’s position on this point.
22. As set out above, the applicant says the Council withheld the content of its enforcement file, despite repeated requests. However, even if this had been disclosed to the applicant, it is unlikely to have avoided an appeal, given the Council’s conclusion with regard to the alleged breach and its overall acceptability. The Council’s reasoning for issuing the enforcement notice, including its assessment of curtilage, was also set out comprehensively in their appeal statement and associated appendices. The applicant was therefore aware of the Council’s reasons for taking enforcement action.
23. The concerns raised in respect of meetings, site visits and/or authority to enter the appeal site are unlikely to have altered the Council’s position with regard to the need for enforcement. Once again, this means even if the applicant was able to demonstrate unreasonable behaviour in this regard, it would not have directly led to unnecessary or wasted expense. The same is true of other allegations of maladministration by the Council.

Conclusion

24. Whilst the applicant has identified certain instances of unreasonable behaviour on the part of the Council, I am not persuaded that such behaviour materially affected the outcome of any of the applications. In turn, the appeals would have been needed regardless, and the time and expense incurred by the applicant during the appeals process was not unnecessary or wasted.

25. Overall, this means unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in respect of any of the appeals.

James Blackwell

INSPECTOR