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## Costs Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

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### Costs application in relation to Appeal Ref: APP/H0520/X/24/3348935

- 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 Mrs Margaret Harris for a full award of costs against Huntingdonshire District Council.
- The appeal was against the refusal of a certificate of lawful use or development for 'unrestricted use of a dwelling granted planning permission on 28 May 1996 under reference 96/0408'.

**The Cottage, New Manor Farm, Ellington Road, Woolley, Huntingdon PE28 5BH**

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### Decision

1. The application for an award of costs is allowed in the terms set out below.

### 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 appellant argues that the Council failed to produce evidence to substantiate its case and did not follow established case law.
4. I am not persuaded that there was any unreasonable behaviour arising from a lack of evidence on the Council's part, or on its approach to the appellant's evidence on the history of the site. In fact, it is notable that there is no dispute on factual matters. The Council accepted the appellant's claims regarding the occupancy of the dwelling and said that its own Council Tax records corroborated them. The dispute really arises from what to make of the established factual position.
5. As to case law, a number of judicial authorities were raised by the appellant in support of the LDC application. The Council was duty-bound to take these into account in reaching its decision.
6. As I have indicated in the appeal decision, the periods of non-occupation the parties refer to in 2022 and 2023 were not, in fact, critical to the decision, since immunity had already been achieved by then. I am, however, mindful that that is not the case that was argued when the appeal was submitted.
7. However, the appellant's case has always included the argument that the brief period of non-occupation in 2023 was *de minimis*. Even setting aside my view that immunity from enforcement action had already been achieved by then, the Council could have decided to issue a certificate if it had agreed with the appellant on the *de minimis* point.

8. Unfortunately, however, the Council did not provide any adequate analysis of that matter, despite the appellant having provided relevant case law. The appellant's statement included a lengthy quote from *Basingstoke and Deane BC v SSCLG & Stockdale [2009] EWHC 1012 (Admin)*, which indicated that a period of several weeks might reasonably be regarded as *de minimis*. The Council was not obliged to reach the same view on the facts of this case, but it should have provided some reasoning to explain clearly how it came to the view it did.
9. Instead, having noted the 2-week break, the officer's report simply concludes 'Therefore, the evidence submitted does not on the balance of probabilities support continued occupancy for a period in excess of 10 years by virtue of the break in occupancy for improvement work'. This implies that the Council equated any break in occupancy with a break in the breach of the condition. That is not supported by the case law the appellant had provided, and it was unreasonable of the Council to take that approach in the light of that. Similar points have been made in the appellant's appeal submissions, but the Council has not addressed them in any more detail. Since the question of whether the break in occupation was *de minimis* was central to the Council's approach to the decision, it needed to reason the matter through adequately.
10. In its appeal statement, the Council refers to the cases of *Nicholson v SSE & Maldon DC [1998] JPL 553* and *North Devon DC v SSE & Rottenbury [1998] EGCS 72* and makes the point that 'there is no defined *de minimis* period of vacancy'. While that is true, it does not excuse the Council of the responsibility to reason the matter through when it has been raised by the applicant. Indeed, the fact that such a period is not defined in law reinforces the need for it to be reasoned on a case-by-case basis. That has not occurred here.
11. For these reasons, I conclude that the Council's approach to the decision was unreasonable. It is clear that this has given rise to the appeal. This has caused the appellant to incur unnecessary expense in submitting the appeal and preparing the case, using the services of a professional agent. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

### **Costs Order**

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Huntingdonshire District Council shall pay to Mrs Margaret Harris the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Huntingdonshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Peter Willows*

INSPECTOR