



Costs Decision

Site visit made on 27 May 2025

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2025

Costs application in relation to Appeal Ref: APP/R0660/X/24/3352569

Brink Barn, Buxton New Road, Macclesfield, Cheshire East, SK11 0AN

- 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 & Mrs James & Anna Marcham for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the use of land as domestic garden in connection with the dwelling known as Brink Barn.
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Decision

1. The application for a full 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 application for a certificate of lawful use or development (LDC) that was the subject of the appeal was submitted to the Council accompanied by, amongst other things, statutory declarations by Blair Whitehurst and James Marcham. The Council's Officer's Report refers to the declaration made by Blair Whitehurst by reference to paragraph 4.4 of the Planning Statement accompanying the application. However, the report confirms that 'the Statutory Declaration from Mr Whitehurst was not submitted alongside this application, therefore the above statement holds limited weight'. I also note that under the heading Applicant's Supporting Information in the Officer's Report, only the Planning Statement and 'Two Statutory Declarations from the applicants James and Anna Marcham' are listed.
4. The Council do not dispute the statutory declaration of Blair Whitehurst was submitted with the LDC application. They argue the applicants have misinterpreted the wording of the Officer's Report. However, I do not accept the words 'the Statutory Declaration from Mr Whitehurst was not submitted alongside this application, therefore the above statement holds limited weight' can be interpreted as meaning anything other than what it says, even when read in the context of paragraph 4.4 of the Planning Statement. This is supported by the fact the statutory declaration is not listed in the additional supporting information. The only reasonable interpretation is that the Council officer meant that because the statutory declaration was not submitted, only limited weight could be attached to the statement in paragraph 4.4. In no reasonable reading of the Officer's Report does it suggest that the statutory declaration does not confirm what was said in paragraph 4.4, and its not possible for

it to do so as it is evidently clear the Officer did not take into consideration the statutory declaration because they did not believe it had been submitted.

5. Therefore, I find the failure of the Council to consider such a significant material consideration to be unreasonable behaviour. Had they considered it then the outcome of the application may have been different, possibly negating the need for the applicants to lodge an appeal. Indeed, in my determination of the appeal, the statutory declaration is a material consideration weighing in significant favour of the appeal. I also note the Council did not address this matter at all during the appeal process, simply relying on the Officer's Report, including its clearly erroneous omission of the consideration of the statutory declaration. Therefore, as the applicants have incurred expense in lodging the appeal, which is reasonable to conclude would have been unnecessary had the Council considered the statutory declaration, then this expense has been unnecessary.
6. Moreover, the Council's attempt to argue that the problem was the applicant's misinterpretation of a sentence that could not possibly be misinterpreted by any reasonable person is also unreasonable, and quite frankly lamentable, behaviour. However, I find this has caused no unnecessary expense incurred on behalf of the appellant.
7. The Council's significant delay in determining the LDC application, with the only correspondence that it would be refused being received six months after the application was made, was also unreasonable. But these are failings which occurred at the application stage, rather than during the course of the appeal, and do not form part of any wider pattern of unreasonable behaviour that has affected the appeal process.
8. The Council's consideration of aerial photographs that the appellant was not aware of and was not given the opportunity to comment on was not unreasonable. The onus is on the appellant to make their own case and provide whatever evidence in support of it they deem necessary.

Conclusion

9. For the reasons given above, the failure of the Council to take into account the statutory declaration of Blair Whitehurst amounts to unreasonable behaviour that has resulted in unnecessary expense and a full award of costs is therefore warranted.

Costs Order

10. 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 Cheshire East Council shall pay to Mr & Mrs James & Anna Marcham, the costs of the appeal proceedings described in the heading of this; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Cheshire East 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.

A Walker

INSPECTOR