
Costs Decision

Site visit made on 20 May 2025

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2025

Costs application in relation to Appeal Ref: APP/X1545/X/23/3325229 The Willows, Hackmans Lane, Purleigh, Essex CM3 6RJ

- 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 Gary Coveley for an award of costs against Maldon District Council.
 - The appeal was against the Council's decision to refuse to issue a certificate of lawful use or development for the use of the dwelling without complying with an agricultural occupancy condition (AOC).
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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, given the amount of evidence which had been produced in support of his claim, the Council behaved unreasonably in that the application was unreasonably refused, necessitating the appeal. He also refers to the Council's case report which described the burden of proof as being that beyond reasonable doubt. This is the proof required in criminal rather than civil cases and, is incorrect; the proof being, instead, on the balance of probability. However, I do note that the reason for refusal corrects this in properly referring to the latter.
4. The onus of proof in dealing with s191 applications, where from the passage of time immunity from planning control needs to be demonstrated, rests with the applicant. To prove his claim, on the balance of probability, the evidence adduced by the applicant should be precise and unambiguous. The wording of the reason for refusal in this particular instance can be interpreted that the Council had concluded that insufficient evidence had been adduced and, as such, the applicant had failed to prove his case.
5. Upon reaching my decision I found otherwise in that the evidence was sufficiently comprehensive to show that the appellant had breached the AOC, and continuously, for the necessary period of time, to be immune from planning control. Accordingly, lawfulness had been demonstrated.

6. Nonetheless, that aside, as an appendix to his Statement of Case, the applicant provided a series of e-mail exchanges between his agent and the Council. This would suggest that the application, as submitted, was incomplete as per the Council's requirements for assessing s191 applications such as this.
7. In illustration, the application was submitted in December 2022 without any statutory declaration (SD) from the applicant in support. Subsequently, by way of e-mails dated 23 and 28 February 2023, the Council's case officer specifically requested that a sworn SD should be provided to confirm that no one at the dwelling had been employed locally in either agriculture or forestry. This was a reasonable request, being in direct reference to the restrictive wording of the planning condition at issue.
8. However, no SD was sworn until 7 March 2023 and, for some reason, the statement made no mention of 'forestry'. As such, and despite weight that might have been afforded to the other evidence produced, the Council, by reference to the case report, clearly regarded this as an important omission. Accordingly, the application was then refused on the 26 April 2023. An appeal was subsequently lodged in July 2023, but it was not until 27 September 2023 that a second SD was sworn which, for the first time, made mention of forestry.
9. Accordingly, when assessing the evidence in its entirety, I had the benefit of this additional evidence which the Council had not, and I was satisfied that, taking everything together, immunity by way of the ten year bar had been shown. The applicant might consider that the Council took a rather narrow viewpoint in reaching its decision, but I consider that the submission was incomplete until after the appeal stage had commenced. If a more explanatory SD had been produced earlier the Council's decision might well have been different.
10. For the reasons given above, I consider that the Council's decision to refuse the application was well founded, and 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.
11. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR