Costs Decision

Site visit made on 6 November 2009

by Derek Thew DipGS MRICS

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
12 November 2009

Costs application in relation to Appeal Ref: APP/P2365/X/09/2109940
Homefield, Moss Lane, Burscough, Ormskirk, L40 4AT

- The application is made under the Town and Country Planning Act 1990, sections 195, 196(8) and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mrs E & Messrs D, A and D Guest for a full award of costs against West Lancashire District Council.
- The appeal was against the refusal of the Council to issue a a certificate of lawful use or development for the proposed siting of 2 static caravans each of which will not exceed 10.67m x 3.66m in dimension for use as accommodation ancillary to the residential occupation of the dwelling house.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

Reasons

1. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

2. The Council's case is based principally upon the assertion that the siting of the caravans would not be lawful on the basis of the provisions of Class E in the Schedule to the Town & Country Planning (General Permitted Development) (Amendment)(No.2)(England) Order 2008. This unfortunately amounts to a very substantial misunderstanding of the nature of the proposal.

3. By considering the proposal primarily in the context set by the 2008 Order the Council failed to address whether or not the siting of 2 caravans amounted to development. It appears to have been assumed that development was involved. Then, as the caravans were to be sited within the curtilage of a dwellinghouse, the Council then seems to have simply looked at the proposal in the context of that Class in the 2008 Order thought to be the most relevant. This has resulted in the scheme being assessed in the context of Class E to the Order, which relates to the provision within the curtilage of a dwelling house of a building or enclosure. In other words this Class relates to operational development. In my decision on the appeal I make the following observations:

> " *As a caravan is capable of being moved from one place to another, then the placing of a caravan on land generally cannot be regarded as the carrying out of building, engineering, mining or other operations. In other words, the mere stationing of a caravan on land is not development. So it must follow that, for the siting of a caravan on*

land to amount to the carrying out of development (and thereby be subject to the provisions of section 57 of the 1990 Act) it has to result in the making of a material change in the use of the land."

There is nothing novel in these words; they do nothing more than set down the conventional planning approach to the siting of a caravan on land. I acknowledge there is evidence to show the Council did address the use to which the caravans might be put. But there is no substantial evidence to show that consideration was given to the question of whether the intended use of the caravans differed to any material extent from the current lawful use of the site.

4. Both the officer's report on the application and the Council's response to the application for costs display muddled thinking. The Council has failed to have regard to long-established planning principles and case law relating to the siting of caravans, and by so doing has acted unreasonably. Those unreasonable actions have caused the appellants to incur unnecessary expense, and so a full award of cost is justified.

Formal Decision and Costs Order

5. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that West Lancashire District Council shall pay to Mr David William Guest, Mrs Elaine Teresa Guest, Mr Allan Curtis and Mr David William Guest, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 195 of the Town and Country Planning Act 1990 as amended against the refusal of a certificate of lawful use or development for the proposed siting of 2 static caravans each of which will not exceed 10.67m x 3.66m in dimension for use as ancillary accommodation incidental and subordinate to the residential occupation of the dwelling house.

6. The applicants are now invited to submit to West Lancashire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Derek Thew
Inspector