
Costs Decision

Hearing held on 26 July 2016

Site visit made on 26 July 2016

by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 16 August 2016

Costs application in relation to Appeal Ref: APP/R0660/W/15/3141919 The Walled Garden, off Kings Lane, Welsh Row, Nantwich, Cheshire CW5 5DY

- 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 4 Real Developments Ltd for a full award of costs against Cheshire East Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for construction of 6 attached dwellinghouses and 2 apartments.
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Decision

1. The application for an award of costs is refused.

The submissions for 4 Real Developments Ltd

2. The appellants consider the Council acted unreasonably in failing to address in a fair, reasonable, consistent and legal manner the ownership of the listed walls, despite Counsel's opinion.
3. Furthermore the Council validated the application in 2008, and several others relating to the development of the site, including a recent application for listed building consent, accompanied by Certificate A. Therefore the Council accepted that the ownership of the wall was vested in the applicant.
4. The Council has ignored communications from the appellant including requests for further meetings and discussions. Moreover it has failed to give a further extension of time which has forced the appellant into the appeal process.

The response by Cheshire East Council

5. The Council has engaged in discussions throughout the period since the resolution on the planning application was made. The Council's advice that the appellant apply for title to the Land Registry was accepted but not acted on.
6. The Council has a duty to ensure that any agreement or acceptance of a planning obligation is legally binding, enforceable and consistent.
7. The Council has taken every reasonable step to accommodate the appellant in extending the time for the resolution of these matters.

Reasons

8. Paragraph 030 of the *Appeals* section of the Planning Practice Guidance (PPG) sets out that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur costs in the appeal process. Unreasonable behaviour in this context can either be procedural - relating to the process, or substantive - relating to issues arising from the merits of the appeal. In this case the claim for costs centres on both substantive and procedural matters. The matter at issue between the parties is whether, without the applicants having title to the listed walls, a planning obligation to secure the repair and on-going maintenance of the walls could be enforced.
9. It is not unreasonable, particularly as the applicants have accepted that they do not have title to the walls, for the Council to raise an objection to the issue being dealt with by means of a planning obligation. Under guidance set out in the National Planning Policy Framework and Planning Practice Guidance the Council had a duty to consider whether an obligation meets relevant tests, including its enforceability. The reason for the Council's concern is clearly set out in the appeal statement and in the costs rebuttal. Whilst the applicants do not agree with it, for reasons set out in the it is not an unreasonable or an unsubstantiated objection.
10. Whilst the Council accepted the application, which was accompanied by a Certificate A, was valid, it is clear from all I have seen and read that issues relating to title emerged during preparation of the s106 agreement. It seems to me therefore that the application was accepted at face value and did not imply that the Council agreed that the applicant was the owner of the walls. Moreover, in various items of correspondence referred to by the Council, and in Counsel's opinion of 13 May 2013 it was accepted that from the filed plan it was not possible to discern the title to the walls.
11. During the course of the application the Council granted several extensions of time to the applicant in order for the matter to be resolved. Given the substantial amount of time that has passed since the Committee resolution in 2008, the amount of correspondence between the parties, including discussions about whether the matter could be dealt with by way of a Grampian condition, and from all I heard at the hearing, I am not convinced that a further extension of time would have resulted in a resolution of what was a fundamental disagreement between the parties. Consequently, I do not consider the Council acted unreasonably in procedural terms by denying the applicants a further extension of time.
12. I have considered the applicants' request for a partial award of costs should an award for full costs be rejected. However, no unreasonable behaviour on the part of the Council has been demonstrated. Consequently the application for an award of costs against the Council is dismissed.

S Ashworth

INSPECTOR