
Costs Decision

Site visit made on 11 November 2016

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS DipTP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 December 2016

Costs application in relation to Appeal Ref: APP/Q3305/X/16/3149306 Market Place, Frome

- 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 Frome Town Council for a full award of costs against Mendip District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for works to the public realm in the market place intended to enhance and optimise the trading space, introducing new paving materials and street furniture. A new seated area to the upper western end of the square will be created. The level difference around the Boyle Cross will be adjusted with new kerbs and steps. The extent of the works will be maintained within the existing site boundary.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, costs may only 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 and response have been made in writing.
4. I note the planning and listed building applications were made on the advice of officers. However, just because the officers advise this and support a proposal, does not mean that the council has to follow the officers' advice or that refusal in itself means that the advice to make the application was unreasonable. The officers also correctly indicated that lawfulness can only be reliably confirmed through an LDC application.
5. The applicant notes that the council did not identify a specific reason for refusal either at the committee or in the decision notice. A reason was given, but effectively the decision was a generic one simply saying the proposal did not comply with Part 12 of The Town and Country Planning (General Permitted Development) Order 2015. Given that the proposal went to the committee with officer support, I consider that it was necessary for the council to properly identify in the reason for refusal specifically why it would not comply.
6. I have found in this appeal that the application can reasonably be made by someone other than the current local authority that controls the land as it is common knowledge that planning permission goes with the land and not the

applicant and any certificate can make its terms clear, so it was not reasonable to refuse the application on this basis.

7. The council say that it decided the application on the basis of the application made, and on this the applicant wrongly indicated that it was the owner of the land. However, this appears to have only been identified when the applicant submitted the appeal and post making the decision to refuse the LDC. Therefore, at the time of the decision, the issue of the 'local authority' within the permitted development is not indicated to have been identified. I consider that this does amount to unreasonable behaviour by the council and without that it would not have made any reasonable case against the grant of the LDC in this appeal.
8. Therefore, for all the reasons above, I find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Mendip District Council pay to Frome Town Council the costs of the appeal proceedings. Such costs are to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to Mendip 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 Senior Courts Costs Office is enclosed.

Graham Dudley

Inspector