
Costs Decision

Site visit made on 15 November 2016

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 12 January 2017

Costs application in relation to Appeal Ref: APP/F0114/X/16/3151221 Land between Miller Walk and Simons Close, Bathampton, Bath

- 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 Bath & North East Somerset Council for a partial award of costs against Property Bath Limited/Valerie Vivian.
 - The appeal was against the refusal of a certificate of lawful use or development for the provision of permeable block paving surface to existing private way.
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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 Council's case is that there has been the submission of late evidence by the appellant that has resulted in wasted expense for the Council.
4. The appellant indicates that the Inspector invited the submission of additional material at the site visit. That is not the case. An Inspector cannot deal with this type of situation at a site visit. The appellant was advised that any new material has to be submitted to the Inspectorate, explaining why it is relevant and why it is late. At no point did the inspector request evidence. The fact that the Inspectorate accepted the evidence is not a judgement on whether there is any justification for the submission of the evidence at a late stage in the process. Even where evidence is relevant, but is submitted at a late stage, it can be unreasonable and cause the opposing party wasted costs in dealing with it.
5. Quite clearly, additional evidence has been submitted by the appellant, including a number of photographs and it was not simply a statement to correct what the appellant considers was a Council error. It included an 'update' and further arguments against the Council's case. To my mind, while it may have some relevance to the case, there was no reasonable explanation as to why it could not have been submitted at the appropriate time. The matter of passing places was not a new issue, but comments on it are found in the main cases.

6. The late evidence submitted resulted in the Council having to address the matters submitted in a further statement, commenting on the additional grounds of appeal and to my mind this involved the Council in additional costs.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

8. 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 Property of Bath Ltd / Valerie Vivian shall pay to Bath and North East Somerset Council the costs of the proceedings so far as they related to the additional information submitted by the appellant, such costs 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.
9. The applicant is now invited to submit to Property of Bath Ltd / Valerie Vivian 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