



Costs Decision

Site visit made on 18 January 2017

by **Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

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

Decision date: 3 February 2017

Costs application in relation to Appeal Ref APP/F0114/C/16/3153305 The land at parcel 1212, Leigh Lane, St Catherine, Bath BA1 8AW

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Bath and North East Somerset Council for a full award of costs against Ms Kate Chubb, for and on behalf of the Trustees of Beeks Mill.
 - The appeal was made against the decision of the Council to issue an enforcement notice that alleges without planning permission, the erection of a Timber Panel Screen in the approximate position marked with a BLUE line A – B on the *plan attached to the notice*.
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Formal Decision

1. I refuse the application for an award of costs.

The case for the Council

2. *"The LPA considers that the appellant has acted unreasonably in submitting this appeal and as such submits an application award for costs to the Planning Inspectorate in accordance with the guidance set out at paras 027-034 of the National Planning Practice Guidance"* [sic, in full, hence use of quotes].

The case for the Trustees of Beeks Mill

3. At final comments stage it was noted that the Council referred to an application for costs, but that no particulars of such an application had been provided. The application was refuted because it was said that merely submitting an appeal is not unreasonable. Following further correspondence from The Planning Inspectorate it was said that in the absence of a particularised basis for the application that the Appellant was simply unable to comment substantively.

Final observations of the Council

4. Despite being given an opportunity to do so, the Council has made no further comments in respect of the application.

Reasons

5. The Planning Practice Guidance ['the Guidance'] advises that costs may 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.
6. In fifteen years as a Planning Inspector this is the most pathetic application for costs I have ever had the misfortune to have to adjudicate on. The Guidance is clear that there is a right of appeal¹ and this is expressly reiterated in respect of enforcement notices². It continues by saying that the parties in appeals are normally expected to meet their own expenses³. The Guidance says costs may

¹ Paragraph reference ID: 16-001-20140306.

² Paragraph reference ID: 16-018-20140306.

³ Paragraph reference ID: 16-028-20140306.

be awarded where a party has behaved unreasonably and it says unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues. Examples are given. It then makes absolutely clear that: "*An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense*".

7. It is clear that the Council has failed to heed the advice that it has referred to. It has not offered any reason why the mere act of submitting this appeal might be said to constitute unreasonable behaviour. In the context of a statutory right of appeal it would be quite extraordinary for me to make an award of costs against an Appellant merely because they had exercised their right of appeal against such a notice. In the particular circumstances of this case, in the complete absence of any attempt to demonstrate unreasonable behaviour, having regard to the fact that the pertinent advice is in fact in paragraphs 051-054 to which I have not even been referred, this application must fail.

Further observations

8. The Guidance says that Inspectors may use their powers to make an award of costs where they have found unreasonable behaviour, including in cases where no application has been made by another party⁴. Personally I have never exercised this power, but I have seriously considered whether to do so in this case having regard to the following:
- The Council failed to attend or be represented at the site visit, which is expressly identified as an example of unreasonable behaviour⁵. I appreciate that the officer was off sick but cover should be provided;
 - The Council has introduced new policies that are not quoted on the face of the notice, in non-compliance with the relevant regulations. Whilst not going so far as a new reason it is a new policy objection and in that sense also falls within the examples of unreasonable behaviour⁶;
 - The Council assessed the development against the wrong paragraph in section 9 of the Framework and so failed to properly assess whether the structure was inappropriate development, which appears to show a misunderstanding of national policy⁷;
 - Given what is said in sections 3 and 4 of the Appellant's statement, including paragraphs 3.17, 3.20, 4.4 and 4.6, there must, at the very least, be a question as to whether: "*...a more helpful approach [could] ... have resulted in... the appeal being avoided...*"⁸; and,
 - Put bluntly this application for costs is so frivolous as to be a complete waste of public resources.
9. Nevertheless I have exercised my discretion not to initiate an application for costs in this particular case. The Council should however take on board these comments to avoid any prospect of such an award being made in the future.

Conclusion

10. For the reasons identified above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Pete Drew
INSPECTOR

⁴ Paragraph reference ID: 16-036-20140306 [see also 16-029-20140306].

⁵ Paragraph reference ID: 16-047-20140306.

⁶ Noting that the list itself is said not to be exhaustive.

⁷ Paragraph reference ID: 16-049-20140306.

⁸ Source of quote; bullet-point 12, paragraph reference ID: 16-049-20140306.