

Costs Decisions

Site visit made on 3 April 2017

by J E Tempest BA(Hons) MA PGDip PGCertHE MRTPI IHBC

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

Decision date: 20 April 2017

Costs application (A) in relation to Appeal Ref:

APP/G1630/W/16/3161703

The Old Mill House, Oxenton, Cheltenham GL52 9SE

- 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 Mr R Thomson for a full award of costs against Tewkesbury Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission to demolish derelict structure and replace with ancillary building.
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Costs application (B) in relation to Appeal Ref:

APP/G1630/Y/16/3161699

The Old Mill House, Oxenton, Cheltenham GL52 9SE

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20,89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Thomson for a full award of costs against Tewkesbury Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for listed building consent to demolish ancillary building and replace with ancillary building.
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Decision

1. The application for an award of costs (A) is refused.
2. The application for an award of costs (B) is refused.

Reasons

3. The Planning Practice 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 expense in the appeal process.
 4. Although the applicant refers to the application and related appeals in the singular, the application for costs refers to both appeal references as set out in the headings above.
 5. The basis of the applications is that the Council behaved unreasonably by not determining the applications within the eight week time period or requesting an extension of time in which to do so. The letter from the Council to the applicant acknowledging the application states that a decision should be reached by 9 September 2016 unless an extension of time beyond that date has been agreed in writing.
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6. In response to the application for costs, the Council has provided copies of email correspondence between the applicant and Council. This correspondence dates from 5 September and ends on 19 October 2016. The appeal is dated 25 October 2016.
7. The email correspondence shows that the applicant submitted amendments to the Design and Access Statement in the light of comments made by the conservation officer. It is also clear from the correspondence that the applicant was subsequently trying to establish whether the proposals could be amended to secure a favourable decision from the Council.
8. Although not stated explicitly by the Council, it is reasonable to assume that the Council could have determined the applications, presumably under delegated powers, within the target dates. Instead the Council entered into dialogue and correspondence. Much of this focussed on the Council's concerns with regard to the proposed building providing storage which would be ancillary to the house but outside the residential curtilage. The Council also referred to there being a lack of justification for the proposed building in the light of a recent grant of permission for a large garage building with storage above.
9. I note that these concerns were not directly addressed in the applicant's responses which focussed on size, materials and pointed out that the existing building in the field was not raised at the time the garaging and storage building was permitted. The correspondence ends somewhat inconclusively although it is clear that the Council were indicating the proposal as submitted would be refused.
10. The correspondence covers a period from shortly before the agreed determination date of 9 September to a date shortly before the appeals are lodged. The applicant's email of 10 September raises the possibility of extending the period for determination of the application in the context of negotiations. Whilst there is no formal written agreement to a revised date, it is clear that negotiations continued into October.
11. On the basis of the correspondence provided, I consider that in respect of the application for planning permission the Council did not behave unreasonably in their failure to determine the application within the eight week period. In respect of the application for costs (A) I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated.
12. In respect of the application for costs (B) relating to the appeal against the Council's failure to determine the application for listed building consent, there is no correspondence to suggest that the Council gave consideration at the application stage as to whether listed building consent was required. The applicant lodged an appeal against the non-determination of the application for listed building consent and at this stage the Council stated that listed building consent was not required. I consider that the Council behaved unreasonably in this respect. However, the grounds of appeal provided by the applicant are very brief and similar for both appeals. Consequently, I am satisfied that the applicant would not have incurred any significant expense additional to that incurred for the planning appeal with regard to the submission of this appeal.

13. In respect of the application for costs (B) I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance has not been demonstrated.

J E Tempest

INSPECTOR