

Costs Decision

Site visit made on 30 March 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 16 May 2017

**Costs application in relation to Appeal Ref: APP/X1545/C/16/3161041
Land at Tolleshunt Wood within Chantry Wood, Witham Road,
Wickham Bishops, Essex CM8 3NQ**

- 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 Maldon District Council for a partial award of costs against Mr Guy Dehn.
 - The appeal was against an enforcement notice alleging the unauthorised operational development to erect a building.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. This claim for costs has been judged on its merits with all the evidence taken into account and with regard to the circumstances relating to the issue of the enforcement notice and to the appeal.
4. The Council seeks a partial award of costs on the basis that Mr Dehn behaved unreasonably by lodging an appeal on grounds (c) and (f).
5. The PPG advises that appellants are at risk of an award of costs being made against them if a ground of appeal had no reasonable prospect of succeeding.
6. As is clear from my appeal decision, the works carried out could not truly be described as works of maintenance, improvement or other alteration of a building. Rather, the works involved the rebuilding of the hut. The points of law arising from reference to the planning acts were not arcane or arguable. It should have been clear from the start that the appeal on ground (c) had no reasonable prospect of succeeding. I consider that the appellant's behaviour was unreasonable in this respect. It resulted in the Council undertaking unnecessary work and incurring unnecessary or wasted expense in the appeal process insofar as ground (c) was concerned.

7. Whilst I understand the Council's position on ground (f), Mr Dehn has a right of appeal to protect his interests in his land and it is open to him which grounds of appeal he pursues provided he submits sufficient and reasonable facts to accompany them. As it happens my appeal decision did not cover ground (f) since the enforcement notice was quashed after planning permission was granted on ground (a) and in respect of the deemed planning application.
8. The lesser steps identified in ground (f) by Mr Dehn - reverting to a single door access and painting the hut black – were related to addressing any possible material change in the appearance of the hut following on from the ground (c) appeal. Even so, *TAPECROWN LIMITED v THE FIRST SECRETARY OF STATE & ANR [2006] EWCA Civ 1744* is authority for the view that if there is an obvious alternative which would overcome planning difficulties, at less cost and disruption than total demolition, an Inspector should consider it. As there is such a possible alternative presented and there is a ground (a) appeal in this case, I could well have granted planning permission for the building with those suggested changes under section 177(1) of the 1990 Act as amended since they would be part of the development enforced against.
9. I did not formally consider the suggested changes in my appeal decision as I found the development to be wholly acceptable as built. In other circumstances, it is quite possible that similar lesser steps may have been found to be advantageous. The enforcement regime is not meant to be punitive and I consider that the submission of the ground (f) appeal, alongside the ground (a) appeal, did not amount to unreasonable behaviour by Mr Dehn. No award of costs is made against Mr Dehn in respect of ground (f).
10. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified in respect of ground (c) only.

Costs Order

11. In exercise of the 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 enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Guy Dehn shall pay to Maldon District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the appeal on ground (c); such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mr Guy Dehn, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Dale

INSPECTOR