
Costs Decisions

Site visit made on 2 May 2017

by **Paul Dignan MSc PhD**

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

Decision date: 25 May 2017

Costs applications in relation to Appeal Ref: APP/D0121/X/16/3158051 82 Clevedon Road, Tickenham, BS21 6RD

- The applications are made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - **Application A** is made by North Somerset Council for a full award of costs against Mr D J Withers.
 - **Application B** is made by Mr D J Withers for a full award of costs against North Somerset Council.
 - The appeal was against the refusal of the Council to issue a certificate of lawful use or development for Residential leisure use ancillary to the use of number 82 as a dwelling house.
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Decisions

1. **Application A**: The application for an award of costs is allowed in the terms set out below.
2. **Application B**: The application for an award of costs is refused.

Application A

3. This is the application by the Council for a full award of costs against Mr Withers. Guidance on the award of costs in planning appeals is given in the government's Planning Practice Guidance (PPG). Costs can only be awarded where unreasonable behaviour leading to unnecessary or wasted costs has been demonstrated. The application is made on substantive and procedural grounds. PPG paragraph 053¹ advises that the right of appeal should be exercised in a reasonable manner, and that an appellant is at a risk of an award of costs being made against them if the appeal had no reasonable prospect of success. It advises that this may occur in LDC appeals, where the onus of proof on matters of fact is on the appellant, where it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed.
4. In this case there has been a very recent appeal², dealt with by public inquiry, which explicitly concerned some of the same land, and considered the planning circumstances of the appeal site. The Inspector in that case made specific findings on the planning units comprised in the land occupied by the appellant,

¹ PPG Paragraph: 053 Reference ID: 16-053-20140306

² Appeal Ref. APP/D0121/X/15/3004362

and their uses at certain crucial times, and on the extent of the curtilage of the dwellinghouse at No 82. If Mr Withers accepted these findings then it would have been clear to him that his application could not succeed. Almost all of the information put forward in this appeal was before the 2015 Inspector.

5. Mr Withers claims to have put forward additional case law that supports his case, the implication that had these been put to the Inspector in 2015 then the outcome might have been different. However, the only case law referred to that post-dates the 2015 Inquiry is readily distinguishable. The Inspector in 2015 was an experienced Inspector with a legal background who would have been well aware of the case law relevant to the appellant's arguments, which were essentially the same as those put in the present case. In my view there was no new evidence of substance, or relevant case law, but the same argument was being promoted, albeit from a slightly, but not materially, different angle.
6. I consider that this appeal could not succeed, and that this should have been clear to the appellant from the very recent appeal decision. I conclude that it was unreasonable behaviour on Mr Withers' part to embark on the appeal, and to proceed with it. The Council had to defend the appeal in any case, and the associated costs were incurred as a result. The conditions for an award of the Council's costs are clearly met.
7. The Council's case on procedural grounds is by reference to PPG paragraph 052³. This gives examples of unreasonable behaviour of appellants that may give rise to an award. These include resistance to, or lack of co-operation with the other party or parties in providing information or discussing the application or appeal, and deliberately concealing relevant evidence. Mr Withers certainly appears to have been unwilling to move an inch from his position, despite advice to the contrary from experienced professionals at the Council, but that does not necessarily amount to lack of cooperation. On the point regarding concealing evidence, this appears to relate to photographs which Mr Withers produced at the 2015 Inquiry but was not willing to adduce in evidence this time. From the correspondence I would not describe his actions as concealing the evidence, but he could certainly have been more cooperative on this matter.
8. The essence of Mr Withers' response to the Council's application is that it has been wrong about everything, but it is clear from what I have said above, and in my decision letter, that I do not agree. I am satisfied that it was unreasonable of Mr Withers to make and pursue the appeal, and that behaviour has caused the Council to incur expense unnecessarily. The Council is entitled to recoup its costs, and the application succeeds accordingly.

Application B

9. Mr Withers application for a full award of costs is made on the basis that the Council failed to justify its position and did not understand planning law. However, his case did not demonstrate any misunderstanding or misapplication of planning law on the part of the Council, quite the opposite. I could not say the same about Mr Withers' submissions. Further, the Council provided

³ PPG Paragraph: 052 Reference ID: 16-052-20140306

substantial evidence in support of its case, and I have found that its decision not to grant an LDC was soundly based. I see no justification whatsoever for an award of costs against the Council, and I conclude that the application should not succeed.

Costs Order in respect of Application A

10. 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 D J Withers shall pay to North Somerset Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The Council is now invited to submit to Mr D J Withers, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Dignan

INSPECTOR