
Costs Decision

Inquiry held on 23 May 2017

Site visit made on 23 May 2017

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: 18 July 2017

Costs application in relation to Appeal Ref:

APP/W1145/C/16/3159713/14

Crooked Oak Nursery, Bovacott Lane, Holsworthy, Devon EX22 7YA

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Torridge District Council for a partial award of costs against Mr and Mrs Webb.
- The inquiry was in connection with an appeal against an enforcement notice alleging unauthorised operational development by the erection of a log cabin for residential purposes.

Costs application in relation to Appeal Ref: APP/W1145/X/16/3164618

Crooked Oak Nursery, Bovacott Lane, Holsworthy, Devon EX22 7YA

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Torridge District Council for a partial award of costs against Mr Webb.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for a log cabin and land for residential use.
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Decision

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

The submissions for Torridge District Council

2. The application by the Council was set out in writing and forwarded prior to the inquiry and is dated 16 May 2017. At the inquiry the Council reiterated that there had been a shift in the case clearly identified as the application related to the LDC was for a residential use only and not an agricultural worker's cottage. The shift to the agricultural worker's dwelling caused the Council to have to obtain independent expert evidence to assess the agricultural aspects of the development. The first argument was that the building had been in place four years, but then changed to the need for an agricultural dwelling. Although both are residential uses the assessment is very different for each, so this was a substantial shift in the nature of the appeal submitted and required additional expert input.

The response by Mr and Mrs Webb

3. The cost application is effectively on the basis of the change from permanent to temporary permission for the dwelling and the need for more evidence to support that. The need for conditions has to be considered as part of the

process of considering the application and this includes whether it is justified to have a 3 year temporary permission. This relies to an extent on the agricultural use of the land and need for an agricultural worker on the site. While the evidence provided was generated for another planning application for an agricultural building, it was as relevant to this application in terms of the use of the site. In any event, the Council had to consider and make a judgement on the agricultural use of the site whether in the context of this appeal or the application for the agricultural building, so no time has been wasted as there would have been no difference in terms of experience or effort in relation to the assessment of the information for either application. While it is accepted that the information was added after the appeal had been lodged and grounds identified, the further information was provided at the earliest opportunity.

Reasons

4. 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 or wasted expense in the appeal process.
5. It is clear that the appellants have adjusted the basis of their justification for retention/need related to the dwelling at a late stage in the process and after the appeal was made and grounds identified. The appellants' evidence is that this is not a temporary dwelling, but a permanent structure and operational development, which was in part said to be justified by over 4 years' existence. The argument was then added to align with policy relating to agricultural workers' accommodation which relates to temporary accommodation. The evidence produced for a separate agricultural building was effectively transferred into this application for justification of a 'trial' 3 year period.
6. I acknowledge that conditions can be added to control a development, which include in relation to temporary use. However, in this case the justification relates to detailed and specialised arguments that resulted in the Council having to then seek outside expert advice essential for its case, which would not have been so had the original justification and basis for the development not been 'changed'.
7. I accept that the evidence was provided to the Council in relation to another development and it does seem that it would have had to be considered in relation to that application, but there would have been no need for the expert to attend this event. Overall, I consider that the late change has resulted in unreasonable behaviour and unnecessary expense to the Council, as described in the Planning Practice Guidance, but only partially in relation to the preparation for and attendance at the inquiry of the agricultural expert.

Costs Order

1. 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 and Mrs Webb shall pay to Torridge District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred by the agricultural expert's preparation for and attendance at the inquiry. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

2. The applicant is now invited to submit to Mr and Mrs Webb, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Dudley

Inspector