
Costs Decisions

Inquiry held on 1 & 2 August 2017

Site visit made on 1 August 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 11 August 2017

Costs applications in relation to Appeal Refs: APP/F1610/C/16/3156262 & APP/F1610/C/16/3163011

Land opposite 10 Cutwell, Tetbury, Gloucestershire GL8 8DZ

- 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 applications are made by 1. Mr Clive Chivers for a full award of costs against Cotswold District Council and by 2. Cotswold District Council for a full award or in the alternative a partial award of costs against Mr Clive Chivers
 - The inquiry was in connection with an appeal against 2 enforcement notices alleging the laying of unauthorised hard-standing and the change of use of the land to storage of building materials, waste and vehicles
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Costs applications in relation to Appeal Ref: APP/F1610/W/16/3156213

Land opposite 10 Cutwell, Tetbury, Gloucestershire GL8 8DZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by 1. Mr Clive Chivers for a full award of costs against Cotswold District Council and by 2. Cotswold District Council for a full award or in the alternative a partial award of costs against Mr Clive Chivers.
 - The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for the erection of a dwelling and associated works.
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Procedural matter

1. 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.

Application 1: The application by Mr Clive Chivers in respect of Appeals A, B & C.

Summary of submissions by the applicant

2. The application by Mr Chivers was made in writing and can be summarised as follows:
3. The Council had total disregard for the advice it gave in 2012 which suggested that a smaller dwelling could be acceptable at the site. Consequently if the Council had followed its own advice planning permission would have been granted rendering the whole appeal unnecessary.
4. During the processing of the application the Council failed to respond to correspondence from the applicant and to requests for meetings. It also

prejudged the application at an early stage, failed to meet the target date for determination and did not agree to have the application considered by the planning committee.

5. The issue of the Enforcement Notices was unreasonable having regards to all the circumstances of the case and the planning applications which it granted in the immediate environs of the Appeal Site.

Summary of submissions by the respondent

6. The advice given in 2012 was informal and has been superseded by subsequent events. The 2014 appeal confirmed that the principle of a dwelling on the land was unacceptable in planning terms.
7. The Council's engagement was constructive and advised at a very early stage that in the light of the 2014 appeal the application was unlikely to succeed. In these circumstances because there was an in-principle objection there was no purpose in negotiating or meeting.
8. The decision was delegated to officers by the members of the Council and this was because of the scale of the proposed development.

Reasons

9. As I have noted in the appeal decision (Appeal C), the applicant purchased the land following the 2014 appeal. From that latter decision it should have been clear that development of the site for housing would probably be unsuccessful. He and his professional advisors should equally have known that the informal advice given in 2012 had been superseded by the subsequent refusal of the 2013 application and the dismissed appeal.
10. Whilst I acknowledge that Mr Seiersen said that he had tried to respond to the identified shortcomings of the 2013 scheme, including addressing issues of bulk and height, the appeal scheme actually proposed a larger and taller building. In these circumstances I do not find it surprising that the Council advised him at an early stage to consider withdrawing the application and apparently offered to refund the application fee prior to validation.
11. In terms of timeliness I note that the delay was in part due to the need to update the ecological report and this prolonged the determination period for the application. Thus it appears to me that the reasons for delay were due to both parties.
12. The appellant did not seek to argue that the alleged unauthorised development had not taken place or that it did not require planning permission. Indeed he did not challenge the veracity of the allegations. In these circumstances it is not clear, in terms of Appeals A & B, what is considered to be the 'unreasonable behaviour' of the Council
13. I accept it is not good practice for the Council to fail to respond to correspondence. But given the in-principle objection there is no evidence before me that indicates that a refusal could have been avoided by meetings or negotiation. Similarly there is no evidence that a decision made by a planning committee would have led to a different outcome, because any decision maker would have had to give weight to the outcome of the 2014 appeal. Consequently an appeal was probably inevitable. Thus I find that the lack of

response by the Council did not amount to unreasonable behaviour nor did it result in unnecessary or wasted expense in the appeal process so the application fails.

Application 2: The application by Cotswold District Council in respect of Appeals A, B & C.

Summary of submissions by the applicant

14. The written application was for a full or partial award and is summarised below.
15. The application for full costs was on the basis that the appellant conceded that the proposed house (Appeal C) conflicted with the development plan and that there was a need to give considerable importance to heritage matters. He also conceded that limited weight should be given to the provision of one additional dwelling given the demonstrable 5 year housing land supply.
16. The application proposed a house which was larger than that proposed in the 2013 application in terms of both floor space and height and thus he failed to address concerns expressed in the 2014 appeal.
17. In respect of Appeals A and B it was impossible for the ground (d) appeals to succeed as the appellant could not discharge the onus of proof because he had no knowledge in relation to the use of the land prior to his occupation of the land less than 2 years prior to the issue of the Notice. He also failed to understand a basic concept of planning case law, that of the planning unit.
18. The application for a partial award of costs was on the basis that a second day should not have been necessary and this extra sitting time could have been avoided if the appellant had used Inquiry time efficiently and avoided unnecessary and irrelevant repetition.

Summary of submissions by the respondent

19. The appellant had asked for a second day early in the appeal process.
20. The appellant is entitled to make an appeal.

Reasons

21. As I have noted in the appeal decision, the appellant did acknowledge that the proposed dwelling would lead to harm although this was less than substantial. He also conceded that the proposal subject of Appeal C would conflict with the aims of the development plan and the house would be larger than that previously dismissed on appeal.
22. In addition he relied upon out-of-date informal advice from the Council which had previously been tested at appeal and found to be unduly optimistic about prospects for development on the site.
23. In terms of Appeals A & B, the appellant provided the barest of evidence, so much so that I had to confirm at the outset of the Inquiry which grounds were being relied upon. His evidence consisted of assertions and vague memories and was inconsistent and unreliable at best. He seriously failed to discharge the onus of proof upon him.
24. Given that he was professionally represented and that the Council's evidence clearly relied, in part, on an assessment of the relevant planning unit, it was

astonishing that this concept, which was central to the enforcement appeals apparently came as a surprise. I have no doubt that this lack of preparation by the appellant prolonged the Inquiry.

25. In these circumstances and in the light of the 2014 appeal, the Council advice that the planning application was unlikely to succeed, and the acknowledgment that the development conflicted with the development plan and the Framework, the appeal had little or no chance of success. His perseverance with three appeals which had little or no likelihood of a favourable outcome therefore resulted in unnecessary and wasted expense for the Council. Thus all the expense of preparing for and attending the Inquiry has been unnecessary.
26. Because I will be awarding the full costs of the Inquiry to the Council it is not necessary to consider the application for a partial award of costs.

Costs Order

27. 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 Clive Chivers shall pay to Cotswold District Council the full costs of the appeal proceedings described in the heading of this decision, also including the expense incurred in the costs application; such costs to be assessed in the Senior Courts Costs Office if not agreed.
28. The Council is now invited to submit to Mr Clive Chivers, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Sukie Tamplin

INSPECTOR