



Costs Decision

Site visit made on 11 December 2017

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

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

Decision date: 26th January 2018

Costs application in relation to Appeal Ref: APP/P1235/W/16/3165092 Former Council Offices, North Quay, Weymouth, Dorset DT4 8TA

- 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 North Quay Weymouth Limited for a full award of costs against Weymouth & Portland Borough Council.
 - The appeal was against the refusal of prior approval required under Class O, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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.
3. The appellants argue that the Council has behaved unreasonably in withholding counsel's opinion obtained in connection with the application. The opinion, together with a later second opinion, was provided by the Council prior to the production of their statement of case. Whether withholding the opinion was unreasonable or not, it did not lead to an unnecessary appeal nor were unnecessary costs incurred, as the appellants had the opportunity to comment on the opinion.
4. Turning to the substance of the Council's case, the Guidance warns that local planning authorities may be at risk of an award of costs by unreasonably defending appeals, and cites an example of where vague, generalised or inaccurate assertions about a proposal's impact are made, which are unsupported by any objective analysis. Whilst the Council's decision lacked detail for concluding why it considered the use of the building to be *sui generis*, it provided two opinions from respected planning counsel to support its reason, both of which, whilst accepting it was a matter of judgement and that the matter was finely balanced, concluded with different degrees of certainty, that the use of the building was *sui generis*.
5. The appellants take the view, supported by leading counsel's opinion, that the stance that the building's use was *sui generis* was not even arguable. Whilst I recognise that the facts of the appeal case were quite dissimilar to those of County Hall in the Court of Appeal case, the judgment of Stocker LJ in particular, which highlighted the ancillary office use of County Hall to the

decisions taken in the debating chamber and other committee chambers is nevertheless relevant here, as various Committee functions, and some degree of public access and involvement occurred within the building. Although I found in favour of the appellants' arguments, it was a matter of planning judgement, and I consider that the Council's arguments had a respectable basis.

6. The appellants argue that the Council failed to have due regard to the Inspector's conclusion in relation to an appeal concerning West Dorset District Council's former Stratton House Office (Ref: APP/F1230/W/15/3128727) that the premises were Class B1(a) use. However, in that case (and the other cases referred to by the appellants) the question as to whether the Council use of those buildings fell within Class B1(a) or were sui generis did not arise. There seems to have been a general acceptance that they were within Class B1(a) without specifically addressing the matters which the Court of Appeal in the County Hall case¹ found to be relevant. I therefore do not consider it unreasonable for the Council not to follow those examples.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, the application for an award of costs fails.

JP Roberts

INSPECTOR

¹ *London Residuary Body v Secretary of State for the Environment* [1989] 3 PLR 105