
Costs Decisions

Inquiry Held on 26 - 27 November 2019

Site visit made on 28 November 2019

by Katie Peerless Dip Arch RIBA

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

Decision date: 17 January 2020

Costs application in relation to 3 Appeals at Land at Coast Road, West Mersea, Colchester, Essex

Appeal A: APP/A1530/C/18/3218452

Appeal B: APP/A1530/C/18/3218453

Appeal C: APP/A1530/C/18/3218454

- 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 Mr Barry Jones, (Appeal A) Mrs Jackie Jones (Appeal B) and WM Wyatt Limited (Appeal C), for a full award of costs against Colchester Borough Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging :
i) the siting of a concrete foundation; ii) the building of a chalet type structure/building on top of the concrete foundation; iii) the construction of a walkway/jetty as an extension to an existing (lawful) walkway/jetty; and iv) use of the development for residential purposes.
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Decision

1. The applications for an award of costs are refused.

The submissions for the Appellants

2. The Appellants have put full details of their claim in writing so I will not reproduce the text here. However, the basis of their claim is that the Council behaved unreasonably by not accepting that, because the subject of the enforcement notice 'Saltwind' is a vessel that floats, it is consequently a houseboat. They say that, had this been established prior to the Inquiry, as they requested, the appeal could have been avoided.
3. The Appellants say they made a reasonable request to the Council to determine its stance on whether or not the boat floats and they could have responded to that to set the outline for the case.

The response by Colchester Borough Council

4. The Council is not guilty of unreasonable behaviour or the allegation that they are responsible for the full costs of the appeals. The case does not hinge on whether 'Saltwind' floats. The Council's witness explained that the issues were far wider than that. While the Appellants' proofs insist that floating is important, any discussion on this by the Council is a reaction to those claims. In any event, it was agreed at the Inquiry that the issue was not determinative.

5. The Appellants have not gone about producing their evidence in the correct way; they have left it to just before the Inquiry and did not invite the Council to attend the demonstration that was included on the video clips, nor was this included in their proofs of evidence. Had details of the demonstration been agreed and revealed, inquiry time could have been saved.
6. The issue has been elevated beyond its importance. The costs of the whole appeal could not have been avoided even if the Council had seen the evidence earlier. There was nothing unreasonable about the Council's stance in not engaging in discussions with the Appellants about the video. Even if this had been done earlier the Inquiry would still have gone ahead.

Reasons

7. The Government's 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.
8. Whilst it was crucial to determine if 'Saltwind' floated in order to decide whether or not it can be defined as a houseboat for planning purposes in this case, the question is not the only factor that would influence that decision. I have found that, contrary to the Appellants' submissions, not everything that floats is a boat. Therefore, even if the Council had accepted that 'Saltwind' floated prior to the appeal, there would still have been disagreement about whether or not it was also a houseboat.
9. The Appellants carried out their own demonstration of 'Saltwind' floating, which they videoed and submitted during the appeal process. They did not, however, invite the Council to the event and, had they done so, some Inquiry time might have been saved. However, I have seen nothing to suggest that, even if the Council had attended when 'Saltwind' was floated away from the mooring, it would have changed its stance on whether it was a houseboat.
10. Although I have agreed that 'Saltwind' is a houseboat, this decision has been reached as the result of a number of factors, of which the floating issue is only one, all of which were fully explored through the Inquiry process. I consider that the Council put forward cogent arguments to support its case and that the Inquiry would have been necessary whether or not it had previously accepted that 'Saltwind' was able to float.

Conclusions

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Katie Peerless

Inspector