



Costs Decisions

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2021

Costs application (A)

in relation to Appeal Ref: APP/Q1153/X/19/3228379

Land at Trough OS444, Beacon Down, Highhampton, Beaworthy EX21 5LE

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Trevor Griffin for a full award of costs against West Devon Borough Council.
 - The appeal was against the [refusal of] [part refusal of] [failure of the Council to issue a notice of their decision within the prescribed period on an application for] a certificate of lawful use or development for [details of development or use].
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Costs application (B)

in relation to Appeal Ref: APP/Q1153/C/19/3227387

Land at Trough OS444, Beacon Down, Highhampton, Beaworthy EX21 5LE

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Trevor Griffin for a full award of costs against West Devon Borough Council.
 - The appeal was against an enforcement notice alleging that "There has been a material change of use of land and building, without planning permission, from agricultural to a mixed use of agricultural use (sic) and use as a dwellinghouse falling under category C3 dwellinghouses of the Town and Country Planning (Use Classes) Order 1987 (as amended)".
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Decision (A)

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

Decision (B)

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

Preliminary Matters

3. Costs decision (B) relates to the withdrawal by the Council of an enforcement notice and the appeal against that did not therefore need to proceed to determination (Ref APP/Q1153/C/19/3227387). The Planning Practice Guidance (PPG) advises that normally, in such circumstances, an officer in the Planning Inspectorate's Costs and Decisions Team will make the decision on the costs application. However, given that the appeals concerning both costs applications are so closely linked, I am determining both in this decision.

Reasons

4. The PPG advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice; to encourage local planning authorities to properly exercise their development management responsibilities; and to discourage unnecessary appeals.

Whether there has been unreasonable behaviour

6. The appellant has referred in the costs application, to both of the applications that had been made for an LDC, that which relates to the appeal and the previous submission in 2016. I am considering here whether the Council's refusal of the Lawful Development Certificate (LDC) application ref '3983/18/CLE' was reasonable based on the evidence then available or whether it resulted in an appeal that should not have been necessary. Following refusal of the LDC application, the enforcement notice was also then issued.
7. The appellant incrementally converted the agricultural building into a dwelling over the course of a number of years without planning permission. There has been a voluminous amount of information submitted both at the time of the application and since. However, the evidence in my view has been difficult to comprehend due to the amount of it, due to the various sources, formats and the lack of precision.
8. The submissions were brought into some focus by the appellant's planning consultant at the stage of the application submissions and then in the submission of the appeal against the LDC refusal and the notice. At those times, the evidence was still not precise or unambiguous or sufficient in itself to demonstrate the appellant's case on the balance of probabilities. Discrepancies such as receipts not including the address of appeal property and some inconsistencies within statements did not assist the appellant's case. It may have assisted the appellant's case if there had been some floor plans to help demonstrate what photographs were showing for example or to illustrate things that were being referred to in written statements.
9. At the same time, the Council had received representations via Highampton Parish Council questioning the activity at the site. Much of this was reporting the observations of individuals and is of insufficient weight or substance to doubt the appellant's case as now put, on the balance of probabilities. However, at the time when the Council considered the application, that information was assessed in the context of a far less clear case being submitted by the appellant. Had the appeals been determined following a public inquiry, the local people who had made comments may well have appeared at the inquiry and given evidence.
10. Some of the lack of noticeable activity on site may have been due to the appellant keeping as low a profile as possible and so the submissions by the Parish Council was not without credibility. It is also possible that some of the

lack of definite detail within the appellant's case may have been due to the incremental nature of the conversion works. I do not consider that it is justified to call the submission of the Parish Council "misinformation" as suggested by the appellant within the costs application. At the time of dealing with the application, the supporting information and that from the Parish Council was imprecise. I do not consider that the Council had acted unreasonably to that point in the process.

11. The Council reviewed their case when additional evidence was submitted in June 2020 to support the appellant's case in the appeals. They wrote to the Planning Inspectorate on 28 July 2020 to set out that they wanted to "withdraw from the appeals". The letter was clearly an attempt at being helpful to everyone involved in the appeal process and overall to save time and therefore expense. However, it did not give a definite view that the use applied for was, in the Council's view "lawful". It was couched in far less certain terms. There was no analysis of what difference the later evidence and submissions had made. The letter also did not indicate that the Council were going to formally withdraw the enforcement notice. In the absence of such confirmation, both appeals needed to be progressed. To bring the enforcement notice appeal to a halt, it was in the Council's hands to withdraw the notice. With respect to the LDC, I as the Inspector needed to reach my own view of the evidence and it was not from that point a mere rubber-stamping exercise. I considered even after the Council's letter that further questioning of the parties' cases may be necessary.
12. Following a pre-inquiry note sent out to both main parties on 21 October, the procedure was initially changed to written representations and the public inquiry did not go ahead. However, in the absence of definitive information from the Council about withdrawal of the enforcement notice and how it had reviewed the case, there was still a need for evidence to be probed and so a date for a hearing was set for 2 February 2021.
13. Further correspondence from the Planning Inspectorate to the Council did not immediately bring answers to the concerns. However, on 11 December the Council confirmed withdrawal of the enforcement notice and so that appeal did not need to continue from that point. Then, on 11 January, the Council set out in some detail about how it had liaised with the Parish Council when the additional appeal evidence was submitted and its reasoning for changing its view of the case. Importantly, the Council gave a firmer analysis of how the additional evidence had made a difference to their case and that it would have, if received earlier, led to a LDC being granted and no enforcement notice being issued. This has enabled the case to be dealt with through the written representations procedure which will have saved the additional time involved by all parties in having to hold the hearing.
14. The Council's letter of 28 July was at least an attempt to show that a review had occurred and that the Council had a potential change of position. That was sent by the date of the deadline for further comments. Unfortunately, the Council had not provided sufficient detail in that letter in spite of prompts from the Planning Inspectorate which were not acted upon swiftly. I consider that this does constitute being unreasonable behaviour.

Whether wasted expenses

15. Unreasonable behaviour by the Council therefore only occurred late in the

processing of the appeal. It was also clear around the time of the pre-inquiry note of 21 October that the case was unlikely to need to proceed by way of public inquiry. It was noted on 22 October by a member of the Enforcement and LDC Appeals Team within the Planning Inspectorate, that they had spoken to both the appellant's agent and the Council and that it had been agreed by all parties that the case would be likely to proceed by way of written representations. I recognise that this was a preliminary decision that needed to be confirmed. However, the appellant has not set out clearly what additional material they would have been preparing for a public inquiry "for the whole period between the submission of the appeal and the 8 December" as they say in their costs application when it was clear that a public inquiry was unlikely to happen.

16. The lack of follow up from the Council to confirm matters did however result in additional correspondence being sent out from the Planning Inspectorate. The appellant did respond where necessary to that correspondence and has spoken at times to Planning Inspectorate staff. This would have taken up the chargeable time of the appellant's professional advisors which would have resulted in costs being incurred.
17. More generally, the unreasonable behaviour that I have identified has delayed the decision. However, with respect to the advice of the PPG, it has not delayed the development which, as the LDC confirms, was undertaken a number of years ago. There is no wasted expense involved in that.

Conclusion

18. The Council has therefore acted unreasonably but only in relation to the events since the sending of their 28 July 2020 letter. The wasted expenses are limited to any additional correspondence and communication that has resulted for the appellant from that date in relation to both appeals.

Costs Orders (A) & (B)

19. 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 West Devon Borough Council shall pay to Mr Trevor Griffin, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in correspondence and communication about the appeals since 28 July 2020; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to West Devon Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A Harwood

INSPECTOR