



Costs Decision

Site visit made on 8 March 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

**Costs application in relation to Appeal Ref: APP/F1610/C/20/3258581
Land at The Waterfront Tea Room, Victoria Street, Bourton on the Water,
Gloucestershire GL54 2BX**

- 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 Stephen Allely for a full award of costs against Cotswold District Council.
 - The appeal was against an enforcement notice alleging 'Without planning permission the erection of a grey kiosk on the Land'.
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Decision

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

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 basis for the appellant's application is that the Council has: misunderstood the relevant legislation as it relates to the facts of the case; acted contrary to established case law; not produced evidence to substantiate the issuing of the enforcement notice; acted contrary to the requirements of its own Enforcement Plan; failed to have regard to all relevant policies and material considerations; and been inconsistent in its consideration of shepherd's huts elsewhere and other similar facilities locally.
4. As regards consistency, in the officer's reports cited by the appellant¹ there are references to shepherd's huts as 'structures'. However, looking at how these applications were dealt with, and in view of use of the terms 'siting', 'station' and a 'use of the land', I find on the balance of probability that these were not dealt with as operational development. The Council has thus acted inconsistently as regards the present case in this respect.
5. The Council has sought to distinguish other applications for shepherd's huts essentially on the basis that these were not in front of the principal elevation of a listed building. However, it is not a principle of established case law to

¹ Refs: 20/02042/FUL, 20/03157/FUL, 20/00752/FUL

- include an assessment of the sensitivity of an item's location in reaching a conclusion on whether or not it is a building.
6. As such, whilst I do not consider that the Council has misinterpreted the legislation², it seems to have misinterpreted case law references³ to whether or not something has 'significance in a planning context' as including some consideration of planning merits, rather than simply as referring to how long an item is in situ for, when considering its permanence.
 7. The Council references action taken in respect of a nearby kiosk which was referred to in other appeal decisions⁴ as evidence of its consistency. However, I do not have full details of that kiosk in order to enable a proper comparative assessment as regards its size, permanence, and degree of physical attachment. Indeed, the Inspector in those other decisions specifically did not come to a view as to whether the kiosk in question represented operational development. Consequently, whilst I acknowledge the efforts on the part of the Council to engage with the appellant, and intentions to take a fair approach locally, I find that the Council has acted inconsistently and contrary to established case law, and I find unreasonable behaviour in these respects.
 8. As to the Council's case on the planning merits, the delegated report lacked such detail as to substantiate the case for enforcement action. However, both the notice and the Council's statement expanded upon its concerns. Although the Council's statement does not make reference to policy in support of the shepherd's hut remaining, it includes a balancing exercise. I find then that, on balance, the Council has not acted unreasonably in this regard.
 9. Turning to wasted expense, if the Council had acted consistently and followed established case law, it would not have issued the enforcement notice and so the entire appeal could have been avoided. Thus, this unreasonable behaviour has caused wasted expense being the appellant's costs of pursuing the appeal.
 10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

11. 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 Cotswold District Council shall pay to Mr Stephen Allely, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Cotswold District 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.

V Bond

INSPECTOR

² Section 55 and section 336(1) of the Town and Country Planning Act 1990 (as amended)

³ *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No.2)* [2000] EWCA Civ 5569; *R (oao Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin)

⁴ Ref: APP/F1610/F/18/3217460, APP/F1610/Y/18/3217457