



Costs Decisions

Inquiry Held on 23, 24 & 25 March 2021

Site visit made on 26 March 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2021

Costs applications in relation to Appeal Ref: APP/D0121/C/20/3253852 The Olde Shoppe, West Hay Farm, Summer Lane, Banwell BS29 6LE

- The applications are 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 Mr Paul Bateman for a full award of costs against North Somerset Council and by North Somerset Council for a partial award of costs against Mr Paul Bateman.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the change of use of a building to a residential dwelling.
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Decisions

1. The applications are refused.

Procedural Matters

2. The Council submitted a costs application in respect of the withdrawn Lawful Development Certificate (LDC) appeal, reference APP/D0121/X/20/3248958. This is the subject of a separate decision.

Costs application: Mr Paul Bateman

The submissions for Mr Paul Bateman

3. The submission by Mr Bateman was made in writing prior to the inquiry.

The response by North Somerset Council

4. The response by the Council was made in writing prior to the inquiry.

Reasons

5. The 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. Awards against a local planning authority may be either procedural or substantive.
6. The PPG advises for enforcement action, local planning authorities must carry out adequate prior investigation. Local planning authorities are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
7. Although discussed by the appellant under 'substantive matters', the main thrust of the appellant's case on procedural grounds is that prior to issuing the notice, the Council applied to the court for a Planning Enforcement Order (PEO)

- and is (at the time of application) the subject of an appeal against refusal of a certificate of lawfulness appeal [sic], thereby duplicating costs for the applicant and raising the question as to whether it was expedient to take enforcement action.
8. Whilst I note the appellant has had to respond to both processes (s174 appeal and PEO application) in response to the Council's actions, I can only deal with matters relating to the appeal against the enforcement notice. Case law has established that any challenge as to whether it was expedient for the local planning authority to issue an enforcement notice must be pursued by way of judicial review; I have no jurisdiction to determine whether the local planning authority complied with s172 of the Act.
 9. The LDC appeal has now been withdrawn and even if it had not, this does not prevent the issue of an enforcement notice or determination of an associated appeal. As set out in my decision, I have upheld the notice and dismissed the appeal. It follows that I do not believe an appeal could have been avoided by more diligent investigation.
 10. The PPG advises that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include, vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, acting contrary to, or not following, well-established case law.
 11. The appellant raises concern that the Council has not justified, or supplied compelling evidence for its reason for alleging deliberate concealment; there has been a failure to understand the evidence and or documents provided; and the Council has acted contrary to, or not followed, case law.
 12. Section 4 of the enforcement notice clearly details the Council's reasons for issuing the notice. It includes reference to policies of the development plan and the National Planning Policy Framework and also states that it appears to the Council that the breach of planning control has been deliberately concealed. Whilst it was unnecessary for me to determine whether or not there has been deliberate concealment, the Council has provided detailed evidence to the inquiry to support its position in this regard.
 13. Whilst the Council has disagreed with the appellant in terms of the evidence provided, I do not believe that there has been a 'failure to understand the evidence' on the Council's part. The Council has set out its reasons for drawing the conclusions it has and has provided evidence to the inquiry. I do not agree that the Council has acted contrary to well-established case law. To the contrary, I believe it is the appellant's misinterpretation of case law, specifically *Gabbitas*¹, which causes him to believe the Council has acted unreasonably. I cannot therefore agree that the Council has behaved unreasonably in this case.

Conclusion

14. I therefore conclude that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

Costs application: North Somerset Council

The submissions for North Somerset Council

15. The submission by North Somerset Council was made in writing during the Inquiry. The following additional points were made orally:

- It is not a question of what the Council did, it is whether there is any merit in the proposition that the Olde Shoppe straddles the Title boundary. The Council's proposition is that it is not. The appellant should have established that before the costs application. The idea that Councils should have served parties that are clearly not interested owners just in case plans are subsequently inaccurate.
- The appellant still has the test on prejudice wrong. The question is not whether the mortgagee has an interest that is prejudiced by the enforcement notice, of course they do. All owners will potentially be prejudiced. The question is whether the failure to serve has caused prejudice. The Council makes reference to the *Mayes* judgement². What the appellant does is conflate questions 2 and 4 of the 4 stage test that was set out in *Mayes*. The question here that arises is under stage 4 alone. Is there any evidence of actual prejudice? None has been provided. There is no evidence to support the test, that is why it is a hopeless ground.

The response by Mr Paul Bateman

16. The response on behalf of Mr Paul Bateman was made in writing. In summary, the appellant points out that the Title searches carried out did not show the relevant building and that it would have been reasonable to serve the mortgagee. The appellant does not accept the point by Counsel for the Council that no evidence was presented on prejudice.

Reasons

17. The basis of the Council's partial cost claim is that the ground (e) appeal is wholly without merit. This relates to the issues arising from the merits of the appeal and is therefore substantive in nature. The PPG sets out that the right of appeal should be exercised in a reasonable manner and that an appellant is at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding.
18. The Council sets out its reasons for considering the ground (e) appeal to be hopeless within its closing submission.
19. The appeal site comprises a variety of different buildings and structures and appears to have evolved over time, with buildings being enlarged, replaced, constructed and so on. As set out within the appellant's statement, the Title Plan for Title Number ST288366 shows the red line boundary cutting through a building. The Title Plan for ST137496 does not show a building in this location. In my view, there was therefore ambiguity as to which Title Plan the building was located in. Although the Council provided a digitised map with an aerial underlay, these are dated 16 September 2020, some time after the

² *Mayes v SSW* [1989] JPL 848

enforcement notice was served and after the appellant submitted his ground (e) appeal.

20. The plan produced by Urban Design Practice is dated October 2020 and is based upon the appellant's understanding of the site. As will be seen from my decision, I have agreed with the Council that the enforcement notice was properly served. Nevertheless, it was the testing of the evidence and discussion held during the inquiry which enabled me to reach this conclusion.
21. Given my findings regarding the service of the notice, it was unnecessary for me to consider whether the mortgagee would be substantially prejudiced. Nevertheless, part of the Council's argument is that no prejudice has been claimed on the mortgagee's behalf. The appellant has provided case law to support his case and whilst I would have expected the mortgagee to have been engaged to determine whether it considers it would be substantially prejudiced by any failure of service, I don't believe failure to do so constitutes unreasonable behaviour, it simply weakens the appellant's case in this respect, not least because the onus is on the appellant to make their case on the balance of probabilities.
22. Whilst the appeal on ground (e) did not succeed, I do not consider that the appellant was unreasonable in pursuing it. The appellant exercised his right of appeal and was not unreasonable in doing so. Thus, the Council was not put to unnecessary or wasted expense.

Conclusion

23. I therefore conclude that unreasonable behaviour by Mr Paul Bateman, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

M Savage

INSPECTOR