
Costs Decision

Site visit made on 17 November 2020

by Roy Curnow MA BSc(Hons) MRTPI

appointed by the Secretary of State

Decision date: 21 June 2021

Costs application in relation to Appeal Ref: APP/P0119/C/20/3257955 61 Bury Hill, Winterbourne Down, Bristol BS36 1AD

- 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 T Gibbs for a full award of costs against South Gloucestershire Council.
 - The appeal was against an enforcement notice (the 'notice') alleging without planning permission, the erection of two single storey buildings.
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Decision

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

Reasons

2. The Appellant makes the application and his case is made on the basis that the Council has acted unreasonably in its assessments and actions over time. He has not stipulated whether he applies for a full or partial award but, from his submissions, I have taken it to be the former.
3. 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.
4. In greater detail, the Claimant's case is as follows. He made an application for a certificate of proposed development, under s192 of the Act, in March 2014. He says that after an extremely protracted assessment of that application, it was refused, and the Notice issued. Taking more than 6 years to determine the application, this occurred in June 2020, was unreasonable.
5. This was compounded as there was no mention of any problems by any of the Council's officers that were involved. The decision was made at the eleventh hour and was a convenient and contrived way to justify the Council's view on the planning merits of the development. Its view on the planning merits was, he says, pejorative and biased. This was exemplified in the description of the buildings that have been erected in the Notice as having the appearance of dwellinghouses. The Council has failed to provide evidence of its prejudicial position.
6. The Council's case cannot, he says, be supported on any objective analysis. As such, the award of costs is sought.
7. No response to the claim was made by the Council.

8. The PPG sets out that for the award to be made, it would have to be shown that the Council acted unreasonably and that this led directly to unnecessary or wasted expense. Its starting point is that parties will normally meet their own expenses.
9. It took the Council some 6 years to determine the application for a certificate, (Council reference PT14/1116/CPD). In its submissions, the Council did not explain why it took this inordinate period of time to do so. In my view, the time taken, allied to the lack of communication with the applicant in that period, amounted to unreasonable behaviour.
10. However, there is a right to appeal against the failure of a Council to determine a s192 application 56 days after it has been validated. This is set out in s195 of the Act. The Claimant did not exercise this right. Instead, he waited years for the Council to make a decision.
11. Before that application was determined, he proceeded to commence the erection of the two buildings that form the subject of the Notice. This he did, despite not having a formal decision of the Council on the lawfulness of the development or, in the alternative, a formal decision of an Inspector had he made a s195 appeal. Whilst one might sympathise with the claimant's position, given the Council's inactivity, that action clearly came with the attendant risk that the Council might find that the development was not lawful. This is precisely what happened and, for reasons set out in the Notice, the Council took enforcement action against the building operations.
12. For the reasons set out in my decision on the appeal against the Notice, I did not find the Council's position on the lawfulness of the development – which hung on the question of whether the land was to be considered curtilage – to be unfounded or unreasonable. My finding was that it was neither. The Council set out its position, which arose from established case law that it cited, in a clear and considered manner.
13. That decision, however tardy, was to my mind correct. Although the length of time the Council took to determine the application was unreasonable, had it made the same decision in a more timely manner – and I have been given no substantive reasoning to suggest that an earlier decision would have been different – an appeal assessing whether the site was in the curtilage would in all likelihood have occurred. In all probability, the Council would have taken the same position had its failure to make a decision been appealed. The difference in the appeal before me is, however, that the claimant has erected two buildings. Given the lack of a formal decision from the Council, that, as I have said, carried a risk.
14. Whether the timing of the decision on the certificate was convenient or contrived is not substantiated. I did not have to address the question of the planning merits of the case, as no appeal under ground (a) was made. For this reason, the Council did not have to justify its reasons for issuing the notice, including its reference to the buildings having the appearance of dwellinghouses.
15. There was unreasonable behaviour by the Council in the time taken to make a decision on the s192 application. However, the decision that was eventually made by the Council, the issuing of the Notice, and the case it put forward in the appeal were all reasonable actions. As a result, the unnecessary or wasted

expense, as described in the Planning Practice Guidance, has not been demonstrated.

Roy Curnow

Inspector