



Costs Decision

Site visit made on 26 May 2021

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2021

Costs application in relation to Appeal Ref: APP/C3105/W/21/3266561 28 The Moors, Kidlington, Oxfordshire, OX5 2AJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Christopher Bright (on behalf of Oxhold Ltd.) for an award of costs against Cherwell District Council.
 - The appeal was against the imposition of various conditions imposed on a permission following an application to vary a conditions imposed on a previous permission for the redevelopment of a site with three houses.
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Decision

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

Reasons

2. The appellant's application for costs relates in the main to the nature of the pre-commencement conditions imposed by the Council without complying with the relevant Regulations.
3. In the appeal decision, of the 12 conditions disputed I found that 4 conditions were 'Pre-commencement' ones as defined by the Regulations but that there was no explicit notification to the appellant or agreement by him to these conditions, so they were imposed in breach of the Regulations.
4. I have taken account of the fact that similar conditions had in part been agreed by the applicant on a different but related application, but the Regulations are clear that they refer to each permission. Given the guidance in the Planning Practice Guidance, this breach has to be regarded as unreasonable behaviour and it has led to the delay of development that could reasonably have been permitted, without restraint on its commencement, and caused the appellant additional work and expenditure in lodging the appeal. However, not all of the 12 conditions in dispute were deleted in the appeal decision and in some it was necessary to vary or amend them as updated circumstances applied. It was therefore not unreasonable for the Council to impose them as there was a planning justification for them.
5. I therefore conclude that the Council's unreasonable behaviour is confined to the imposition of conditions 3, 4 (part), 5 and 6 and that only a partial award of costs is justified.

Costs Order

6. 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 Cherwell District Council shall pay to Mr Christopher Bright (on behalf of Oxhold Ltd.), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in lodging and addressing the appeal against conditions 3, 4 (part), 5 and 6 imposed on permission 20/02592/F, such costs to be assessed in the Senior Courts Costs Office if not agreed.
7. The applicant is now invited to submit to the 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.

David Murray

INSPECTOR