
Costs Decision

Site visit made on 6 July 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 6 August 2021

Costs application in relation to Appeal Ref: APP/P0119/X/20/3264878 1 Riverside Mill Lane, Frampton Cotterell, Bristol BS36 2AA

- 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 Tim Draisey for a full award of costs against South Gloucestershire Council.
 - The appeal was against the 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 outbuilding within curtilage of residential building.
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Decision

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

Reasons

2. In brief, the Appellant's case is made on the basis that the Council acted unreasonably in its processing and assessment of his application for a certificate of lawfulness. This behaviour was unreasonable and led to an unnecessary appeal, with consequent costs implications. He seeks a full award.
3. 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.
4. The claimant's case is as follows. Save for a letter confirming registration of the application, he heard nothing from the Council from the date that he submitted his application. He says that he attempted to contact the Council to discuss progress and to enquire whether any further information was required on 3 occasions by email and some 15 occasions by phone. This was not countered by the Council, so I take it to be the case. There was no reply on each occasion. The Council was, he says, uncooperative and uncommunicative. In addition, he says that the Council's analysis of the case was incorrect, with points being made belatedly and half-heartedly and no site visit was undertaken.
5. He says that the Council ignored the evidence that he submitted in respect of the height of the building, which showed that it was below the height limits in the GPDO. Furthermore, had there been any doubt, they could have visited the site and measured the building.
6. On the second issue referred to in the deemed refusal, he says that the Council was incorrect in its reasoning relating to incidental use, and that this arose in a large part from the Council's misinterpretation of the *Emin* case.

7. The upshot, he says, was that the Council's approach amounted to unreasonable behaviour. Had the Council engaged with him and answered his questions, the appeal and the costs that this entailed would not have been necessary.
8. In response, the Council points out that parties in planning appeals and other planning proceedings normally meet their own expenses. It acknowledges that it did not make a decision within the 56-day period. This, it says, was due to the nature of the case and the need to carry out thorough research and investigation. It says that it supplied clear reasons as to why the development was not lawful and the application would have been refused as a consequence. It was for the Appellant to prove his case on the balance of probability, using evidence that was precise and unambiguous, rather than for the Council to seek out further information in support of the applicant's case. It refutes the assertion of acting unreasonably.
9. In response, the Appellant states that the Council should have followed good practice and sought a time extension to determine the application. This, in turn, would also have allowed it to communicate with him on the matters that required research and investigation. Overall, he was left with no option than to appeal.
10. I agree with the Appellant that the Council's actions in respect of the time taken to determine the application allied to the lack of communication with him amounted to unreasonable behaviour. However, the guidance makes it clear that it is for a claimant to show that such behaviour led to unnecessary or wasted expense.
11. The Council could have visited the site and measured the building in the manner that was followed at the site visit. However, it relied on the evidence that was before it. Given that it is for the Appellant to prove his case, whilst not particularly helpful, its actions here was not unreasonable.
12. Its reliance on the information that was before it resulted in an incorrect measurement of the height of the building. However, as was illustrated in the agreed measurement obtained at my site visit, the Appellant's submitted measurement was also wrong. Notwithstanding its error, the Council was correct in its finding that the height of the building exceeded permitted development rights.
13. I do not find that the Council entirely based its decision on whether the building was incidental to the enjoyment of the dwellinghouse on its size. It acknowledged the lack of alternative storage space within No 1 and took the views of the Inspector into account, from a recent planning appeal¹ on the site before reaching its conclusion on the matter. Save for that part of its assessment relating to intention, which it did not rely on in its formal decision, its reasoning was sound on the question of incidental use.
14. Although the Council referred to the Appellant's intentions in its submissions, it did not rely on this line of argument in its reason for refusal. The Council's reasoning was vague on the matter of which planning permission had been implemented. However, again, it did not rely on incorrect information in the

¹ APP/P0119/W/20/3251036

reasoning in its formal decision. The reason for refusal was clear and precise in highlighting the two areas where the Appellant's case failed.

15. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Roy Curnow

Inspector