



Costs Decisions

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Costs applications in relation to Appeal ref: APP/G3110/X/21/3272418 Eastern Bank of Castle Mill Stream, from opposite Combe Road to the end of William Lucy Way, Jericho, Oxford, OX2 6EQ

- The applications are 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 first application is made by Mr Elliot Smith for a full award of costs against Oxford City Council. The second application is made by Oxford City Council for a full award of costs against Mr Elliot Smith.
 - The applications are made pursuant to an appeal against the Council's refusal to issue a certificate of lawful use or development for an existing use described as 'up to five boats moored on the Eastern bank of Castle Mill Stream, between opposite Combe Road and the end of William Lucy Way. All boats used as permanent residential moorings. Lawful development certification is not sought for any structures or items on the bank, except for mooring pins (max two per boat) and gangplanks (max one per boat).'
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DECISIONS

1. The appellant's application for a full award of costs is refused.
2. The Council's application for a full award of costs is refused.

PRELIMINARY MATTERS

3. The costs applications were submitted in writing and are a matter of record. The Council responded to the appellant's application but the appellant did not respond to the Council's or submit final comments in respect of his own.
4. The Council seeks 'to recover the costs of this appeal from the appellant on an indemnity basis', which means being 'given the benefit of any doubt on questions of reasonableness'¹. However, both costs applications alike fall to be considered on the basis of the Government's Planning Practice Guidance (PPG).
5. The PPG provides that where a party to a planning proceeding has behaved unreasonably and, in so doing, directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs². Unreasonable behaviour in this context may relate to the process or substance of the appeal and the Inspector has discretion, enabling account to be taken of extenuating circumstances³.

REASONS

The Appellant's Costs Application

6. The appellant claims that the Council behaved not just unreasonably but also in breach of the Human Rights Act 1998 by denying him his right to a fair hearing

¹ Oxford Dictionary of Law

² PPG paragraph ref ID: 16-028-20140306

³ PPG paragraph ref ID: 16-031-20140306

- while pursuing enforcement action and encouraging the landowner to start proceedings which would result in the loss of his home. The appellant argues that the Council, before issuing the 2020 EN, did not make proper investigations, failed to take account of information that he provided with a pre-application query, and relied on irrelevant considerations, such as whether the occupiers are trespassers.
7. The PPG states that costs applications 'may relate to events before the appeal...was brought, but costs that are unrelated to the appeal...are ineligible'⁴. I cannot consider the reasonableness, never mind lawfulness, of the Council's decision to take enforcement action or Network Rail's injunction; those proceedings are separate to this appeal⁵. The appellant will be anxious at the prospect of losing his home but this costs application was made on his behalf by a professional agent and I am surprised that they have made this hopeless and somewhat intemperate case.
 8. One relevant argument is made for the appellant, namely that the Council failed to consider the evidence submitted with the LDC application which showed the number of people living on the site and how long they had been there. However, the Council believed the use to be unlawful in any event, due to conflict with s191(2)(b) of the TCPA90. I found that the Council was wrong in that assessment, but their error stemmed in part from incorrect information given in the Planning Inspectorate's letter of 5 October 2020. The Council received that letter before refusing the application on 27 October and I will not penalise them for acting on it.
 9. The Council made an error of their own volition in taking 16, not 15 September as the 'time of the application'. Had they not made that mistake, they would have been bound to consider the evidence as to whether the time for enforcement action had expired for the purposes of s191(2)(a). The PPG provides that an award of costs may be made against a local planning authority where they act contrary to or do not follow well-established case law – and it is well-established that the time of a LDC application should be taken as when it is made, not received.
 10. However, I am satisfied that the Council would have refused the LDC application anyway, and the appellant did not incur any wasted or unnecessary expense in making an appeal. As the appellant says, the Council had been given evidence of the occupation of the site when pre-application advice was sought in February 2020 – but they still decided to take enforcement action in August of that year. The Council also considered the appellant's evidence in their statement of case for this LDC appeal and yet continued to contest the lawfulness of the use.
 11. The outcome of a costs application does not necessarily reflect that of the appeal. I find that the Council did not behave unreasonably so as to cause the appellant to incur wasted expense as described in the PPG. The appellant's application for an award of costs is refused.

The Council's Costs Application

12. The Council's case is simply that the appeal was 'pursued in circumstances where a lawful development certificate cannot be granted'. Since I have found that an LDC could and should be granted, it follows that this costs application cannot succeed. I do not need to rehearse the reasoning set out in the appeal letter decision as to why the 2020 EN was not 'then in force' at the time of the LDC application.

⁴ PPG paragraph ref ID: 16-032-20140306

⁵ Moreover, under s172(1)(a), it only needs to 'appear' to a local authority that there has been a breach of planning control for them to issue an enforcement notice; they do not need to be sure that there had been a breach or that the time for enforcement has not expired. Whether it is expedient to issue the notice, as required by s172(1)(b), is strictly a matter for the Council.

13. I understand the Council's concerns that the appellant's costs application sought to 'introduce yet more [appeal] evidence' if not make 'misconceived' criticisms. However, I also find that the appellant did not abuse the appeal or costs process. His submissions on the enforcement notice and human rights were not relevant to whether an LDC ought to be granted or costs ought to be awarded – but it is not unusual for any party to raise irrelevant matters in cases such as this; the merits of a use, for example, are commonly rehearsed to no end in LDC representations.
14. The PPG is clear that appeal parties normally meet their own expenses. However inapt at times, the appellant's submissions reflected common misunderstandings and were set out in documents received in accordance with the Procedural Guide and appeal timetable; the Council was able to respond via its representations in the usual way. The Council did not incur wasted expense in contesting either the appeal or, for completeness, the appellant's costs application.
15. With regard to all other matters raised, I conclude that the appellant did not behave unreasonably so as to cause the Council to incur wasted expense as described in the PPG. The Council's application for an award of costs is refused.

Jean Russell

INSPECTOR