



Costs Decisions

Inquiry Held on 8 – 11 June 2021

Site visit made on 18 June 2021

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 November 2021

Costs application in relation to Appeal Ref: APP/V4630/C/19/3230153 Land and buildings known as the Stables, rear of 211-212 Norton Road, Pelsall, Walsall

- 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).
 - **Application A** is made by Mr Carl Powell for a partial award of costs against Walsall Metropolitan Borough Council.
 - **Application B** is made by Walsall Metropolitan Borough Council for a partial award of costs against MR Carl Powell.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission various works to the buildings and other operational development and the residential use of the buildings.
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Costs Application A

Decision

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

The submissions for Mr Carl Powell

2. The submissions were made to the Inquiry in writing and amplified verbally, so I need not repeat them in full. In brief, the partial award is sought because it is argued that the Council acted unreasonably in issuing a notice that required the roofs of the former Stop Building including tower and the garage to be removed and the cement grubbed out. The appellant considers these were the most serious allegations and if upheld would have destroyed any prospect of saving the building. It was clear, the appellant asserts, that these steps could never be justified. This, it is argued was unreasonable behaviour and the appellant incurred unnecessary and wasted expense as a result pursuing these matters.

The response by Walsall Metropolitan Borough Council

3. The response of the Council was provided verbally. In summary the Council considers the various aspects of the notice should not be looked at in isolation. The Council did meet with the appellant in March to see if any understanding could be reached and the direction of travel was made very clear. The decision to concede on some aspects was finely balanced. The Costs regime is not in place to penalise such concessions. Rather, discussions to find resolution is encouraged. The basic conditions for an award of costs is not made out.

Reasons

4. 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.
5. A matter of days before the Inquiry opened, the Council indicated that it was prepared to under enforce in respect of some aspects of the works that had been undertaken, including the requirement to remove the roofs and grub out cement.
6. The Council were entitled to issue a notice directed at the development that has occurred overall. I have noted within my decision that there is no overarching description of the operational development rather the individual elements are listed under separate sub-headings. This offers a detailed understanding of the works that are alleged.
7. In respect of the erection of the roofs to both buildings, there are competing considerations relating to inappropriate development in the Green Belt and harm to openness and heritage considerations given the former Stop Building including tower is locally listed. I do not therefore accept the appellant's proposition that the requirement to remove the roofs could never be justified. The Council has in my view, clearly substantiated its reasons for taking action in its evidence. Furthermore, in the absence of a planning application, there was no mechanism for the Council to control the type of roof lights which it found to be harmful.
8. The Council also maintained its position that the overall appearance (mix) of the mortar was not sympathetic albeit, based on the evidence of the appellant, it accepted that it was not cement mortar as described in the requirements.
9. Accordingly, whilst the Council suggested that some requirements of the notice could be relaxed or waived altogether late in the appeal process, I do not consider the Council behaved unreasonably in doing so. It simply reviewed its position in light of all the evidence submitted to the Inquiry. The concessions invariably saved Inquiry time.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Costs Application B

Decision

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

The submissions for Walsall Metropolitan Borough Council

12. The submissions of the Council were made in writing and so I only summarise them briefly here. The partial award is sought in relation to the appeal made under ground (a) seeking planning permission for the part of the breach concerning the alleged material change of use to residential (Paragraph 3.2 of the notice). The Council, for the reasons set out in writing, consider this part of the appeal had no prospect of success. Accordingly, the appellant acted unreasonably, and the Council incurred unnecessary and wasted expense.

The response by Mr Carl Powell

13. The appellant's response was also provided in writing. In summary, the outstanding issue in a previous appeal was the means of foul and surface water only which the appellant considered could be addressed by condition. This aspect of the appeal made under ground (a) did, the appellant responds, have a reasonable prospect of success.

Reasons

14. 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.
15. The appellant could have been in no doubt before pursuing this aspect of the appeal that sufficient information would be required for an AA to be carried out which would need to meet all the legislative requirements rather than simply address foul and surface water drainage. Whilst I found that the reports submitted and relied upon were unsatisfactory for such an assessment to be made, even in respect of enabling a reasonable consideration of how the risks of accommodating foul and surface water drainage could be mitigated, the appellant's ecology witness did consider the reports sufficient and gave explanation as to why. Again, there were competing considerations to be balanced.
16. Although the appeal did not succeed in relation to this part of the matters alleged, on balance, I do not accept the Council's proposition that the appeal had no prospect of success. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

C Sherratt

INSPECTOR