
Costs Decision

Site visit made on 7 September 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 22 November 2021

Costs application in relation to Appeal Ref: APP/B1605/C/21/3276214 Land at 15 Deep Street, Prestbury, Cheltenham, Gloucestershire GL52 3AW

- 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 Cheltenham Borough Council for a full award of costs against Watin Limited.
 - The appeal was against an enforcement notice alleging the erection of single storey extension.
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Decision

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

Reasons

2. An award of costs will normally be made where: a party has made a timely application for them; a party has been shown to have acted unreasonably; and that unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The general principle of planning appeals is that each party would normally meet its own expenses.

Council's submissions

3. The Council's application was not made on the form provided by the Planning Inspectorate. On that form there is a question as to whether the claim is for a partial or full award of costs. The Council's claim does not specify this, but I have taken it to be a claim for a full award of costs.
4. The Council's case is based on a variety of matters. It says that whilst it demonstrated that the development had not been substantially complete for 4 years, the Appellant did not provide any evidential submissions to contradict that position whilst not providing strong evidence of its own. The Council states that the Appellant provided evidence to support its case that was either inaccurate or untrue.
5. It further points to the Appellant's decision not to take advantage of an earlier opportunity to progress an appeal on planning grounds. That related to a 2017 planning application that the Appellant company withdrew when it became apparent that the Officer report recommended refusal for the retention of the extension. The Council points to the Appellant's failure to voluntarily resolve the matter by submitting a planning application for the retention of the extension, perhaps in a modified form, or submitting further information that the extension was permitted development. Lastly, it claims the lack of co-

operation on the Appellant's behalf is further exemplified by the delay in the submission of its statement of case.

6. These, it says, have led to unnecessary and wasted time.

Appellant's response

7. The Appellant company firstly points to the guidance in the Government's Planning Policy Guidance (PPG) on costs awards.
8. It goes on to say that the Council's case takes a 'scattergun' approach, and that there is no indication as to whether this is a claim for a full or partial award. It points out that it made more than a ground (d) appeal but, in any event, it provided two statutory declarations in support of its case. It submits that the Council does not identify what evidence was incorrect or untrue and, therefore, fails to demonstrate its allegation.
9. In essence, the Appellant says it was within its rights as regards its actions regarding not making a planning appeal. Furthermore, given the time that the Council took to do so, there was no reason to think that it would serve a Notice. It points to what it sees as a lack of communication on the part of the Council and points out that the deadlines for the statements were set out by the Inspectorate and these were met.
10. For these reasons, it is of the view that the Council's claim is unjustified.

Findings

11. I agree with the Council, for the reasons set out in my decision letter, that it has demonstrated that the extension was not substantially complete for four years prior to the Notice being issued. The corollary of this is that I also agree with it that the Appellant was unable to demonstrate that it had been so completed.
12. However, whilst these are the case, I disagree that the Appellant's submissions had no reasonable prospect of success. The Appellant provided evidence, primarily in the form of two statutory declarations which were supported by reasoned submissions. Whilst I disagreed with the submissions, I do not find that they were, by definition, unreasonable. The Council has not specified what pieces of the Appellant's evidence were incorrect or untrue. I did not find this to be the case with its submissions in my assessment of the Ground (d) appeal. Although, there, the Council suggested that the evidence of the invoices and receipts pointed to this, I felt that the Appellant's explanation of a site with better security to be compelling.
13. I have very little evidence relating to the planning application in 2017. Whilst an appeal might have been made at that time, the Appellant was under no obligation to make one. It did not act unreasonably in withdrawing its application.
14. It appears that a case might be made that both parties might have been more helpful and co-operative at times during the period prior to the issuing of the Notice and afterwards. However, neither parties' actions were fundamentally unreasonable. With regards to the Appellant's behaviour, as it is against it that the costs application is made: it acted within its rights in not making an application for either the development that forms the subject of the appeal or a

revised scheme; and it was not obligated to provide evidence as to why the extension was permitted development prior to the service of the Notice.

15. Lastly, the Appellant's submissions were made within deadlines laid down by the Planning Inspectorate and accepted by it as being timely. The Council was given the requisite period to comment on its submissions.

Conclusion

16. For the above reasons, the claim for costs fails.

Roy Curnow

Inspector