

Costs Decisions

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

an Inspector appointed by the Secretary of State

Decision date: 6 May 2022

Costs applications in relation to Appeal Ref: APP/J0350/C/21/3281780 34 Glentworth Place, Slough SL1 3UT

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- Application A is made by Slough Borough Council for a full award of costs against Nadeem Butt.
- Application B is made by Nadeem Butt for a full or partial award of costs against Slough Borough Council.
- The appeal was against an enforcement notice alleging the conversion of an outbuilding, and its use as a self-contained residential dwelling.

Decisions

1. Application A for an award of costs is refused.
2. Application B for an award of costs is allowed in the terms set out below.

Reasons

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.

Application A

4. The Council says that no appeal statement was received from the appellant according to the timetable, and that he tried to introduce new evidence at final comments stage. That is acknowledged, although I rejected the late new evidence relating to the ground (d) appeal – since there was no good reason why it could not have been submitted according to the timetable – and therefore the Council was not put to unnecessary or wasted expense in dealing with that returned evidence.
5. In relation to the ground (f) appeal, it was not unreasonable for the appellant to make it for the first time upon seeing the Council's statement since that statement was clear that the officer visiting the building on 12 February 2020 was satisfied that the shower room referred to in his notes did not form part of any breach of planning control. It was that submission on the part of the Council that triggered the successful argument from the appellant, dealt with in my Decision on the appeal, that the shower room removal requirement went beyond the apparent purpose of the notice in remedying the breach of planning control. It was a reasonable response from the appellant to the Council's submitted evidence, and one which I allowed. It was in the interests of fairness to allow the ground (f) to be made, and then to allow for the Council's comments upon it followed by final comments on that ground alone by the appellant. As a result the appeal process was lengthened but, within the context I have described, unreasonable delay was not caused by the appellant.

6. Further, extensions of time around specific timetable deadlines are granted by the Inspectorate's casework teams after careful consideration taking into account fairness to all parties and, contrary to the thrust of the Council's application, did not give the appellant an 'extra week' to introduce new evidence since that evidence was subsequently rejected. I also note that at least one extension was agreed in respect to the Council's submissions.
7. The Council says that it was unreasonable for the appellant to pursue the ground (d) appeal without a statement and without supporting documentary evidence. However, he did submit initial facts to support his ground (d) appeal together with supporting tenancy and other documents asserting occupation of the building from before the relevant date for enforcement immunity purposes. Notwithstanding that the ground (d) appeal failed, it was not so unreasonably weak in substance that it constituted unreasonable behaviour on behalf of the appellant.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Application B

9. The appellant says that the Council, while casting doubt on the veracity of his submitted tenancy documents, did not contact any of the tenants directly to substantiate that evidence. However, the burden on proof was on the appellant to make his case on appeal and a burden does not exist for the Council to carry out further investigations upon the evidence he submitted.
10. The appellant says that the Council has not submitted an officer report in respect of taking the enforcement action constituted by the notice. He says that this casts doubt over whether proper procedures were followed in relation to issuing the notice and whether it was expedient to do so. It is not within my jurisdiction to address and/or determine whether it was expedient for the Council to issue the notice since case law¹ has confirmed that such challenges must be pursued by way of judicial review. As to the Council allegedly not following proper procedures when issuing the notice, nor do I have jurisdiction to deal with that matter as I may only find a notice a nullity if the defect is evident on the face of the document². These matters are therefore outwith the appeal process, and accordingly are not material to the costs applications which by necessity are concerned with that process. Further, notwithstanding the appellant not having sight of an officer report, the reasons for issuing the notice were clear upon its face and this provided a reasonable basis for the appellant to formulate his appeal case.
11. Therefore the appellant's application for a full award of costs does not succeed.
12. However, I agree entirely with the appellant's argument for a partial award of costs in respect of ground (f). Evidence within the Council's appeal statement clearly and unequivocally indicated that it considered the shower room to be lawful in February 2020, and not part of any breach of planning control. Yet it did not incorporate its own finding to that effect when it came to responding to the ground (f) appeal that was logically made by the appellant upon reading the Council's statement.

¹ Britannia Assets v SSCLG & Medway Council [2011] EWHC 1908 (Admin)

² R v Wicks [1997] JPL 1049

13. It is my view that given the Council's own assessment and advice to the appellant in February 2020³, it was unreasonable for the Council to pursue the notice requirements concerning the shower room and to defend the ground (f) appeal made⁴. As a result the appellant was put to unnecessary expense in pursuing a ground (f) appeal which should not have been necessary.

Costs Order

14. 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 Slough Borough Council shall pay to Nadeem Butt, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of ground (f); such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Slough Borough 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.

Andrew Walker

INSPECTOR

³ The officer's notes read ""Outbuilding has 2 rooms, a WC/shower room and a larger room... Advised to only use the outbuilding incidental to the main house, and that a planning application should not be forthcoming."

⁴ Particularly given the attempts of the appellant's agent to point out the weakness of the Council's position in respect of the notice requirements and to offer to withdraw the appeal should the Council amend the notice accordingly (for instance, by email dated 21 January 2022 which received an unreasonably delayed and negative reply from the Council without substantive explanation on 15 March 2022)