
Costs Decisions

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An Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Costs applications in relation to Appeal Ref: APP/X1165/X/22/3293652 Dawn, Brim Hill, Maidencombe, Torquay TQ1 4TR

- Application A 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 Tom Payne for a full award of costs against Torbay Council.
 - The appeal was against the refusal of a certificate of lawful use or development for extensions, dormer loft conversion and outbuilding.
 - Application B 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 Torbay Council for a full award of costs against Mr Tom Payne.
 - The appeal was against the refusal of a certificate of lawful use or development for extensions, dormer loft conversion and outbuilding.
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Decision

1. Application A – The application for an award of costs is refused.
2. Application B – The application for an award of costs is refused.

Reasons

3. The Planning Practice Guidance (PPG) 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. The start point in a planning appeal is that both parties would normally meet their own expense.

Application A

Case for Tom Payne

4. The claimant states that the Council failed to properly interpret the information submitted with the application. It requested additional information, together with a request for an extension of time. It missed the extended deadline. The refusal was given without further recourse to the applicant.
5. There were errors in the Officer's report that might have been avoided, given the submission of scaled drawings complete with scale bar. Had the Council asked for clarification, the appeal might have been avoided. In any event, it

could have referred to the Technical Guidance¹ to ensure that the right decision was reached.

6. The Council's actions were unreasonable and led to his having to instruct an agent to take the matter forward to appeal, which was an unnecessary cost.

Council Response

7. The Council makes its case on three grounds. However, I have taken two of these to be the basis of its own application for costs and they are referred to below. That which is relevant is that the Council did not go back, as it was clear that the package of proposed development would have been refused anyway. This being the case, an appeal would have been lodged in any event. Further, the Appellant does not acknowledge the difficulties of a multi-faceted application and that there were no accurate plans or descriptions for the property on 1 July 1948. When it did seek further information, this was material and the Appellant did not claim otherwise. It says that the then applicant was given a chance to respond, though there was no obligation on the Council to do so. Overall, the Council is of the view that its decision was justified.

Findings

8. I take that the Council asked for further information to clarify matters at the application stage as a positive move to enable it to make a better informed decision. The questions that were asked of the applicant, set out in Appendix 1 to the costs claim, were largely relevant to the application. The exception was the Council's request in relation to The South Hams Special Area of Conservation. Whether an application for a licence had been made in respect of protected species was immaterial to a certificate application. However, I note that the applicant's response was understandably cursory, and did not lead to unnecessary expense.
9. The other answers to the questions were sometimes more in-depth, but these addressed such matters as the position with the original dwellinghouse, that is to say how it was on 1 July 1948. In this regard, I note that the applicant did not have plans of the property from that date and had to explain how he had reached the positions set out in his initial submissions. It is for an applicant to prove his case and, as such, there was no requirement for the Council to approach the applicant. That it should have chosen to do so should not be held against it.
10. I can see that being told that a decision would be made by an extended deadline at the time of the request for information, only for the decision to be made some weeks later, would be frustrating. However, the applicant had a right to appeal against the Council's failure to reach a decision but did not exercise this. In addition, this would not have precluded the appeal.
11. Although I understand the Council's comment regarding the difficulty arising from assessing the PD rights of a dwelling pre-dating 1 July 1948, I found its comment relating to the difficulty of dealing with 6 aspects of development in application to be wanting.

¹ Permitted development rights for householders - Technical Guidance, September 2019

12. Given that the various elements of the application were easily separated from one another, the Council might have issued a split decision. It did not fully explain why this could not have been done. However, it explained which elements it found would not be lawful and made a case against these. The only case where this did not happen was in the dormer extension. It found that this would not be lawful in its decision, but accepted that this would be the case after receiving the Appellant's statement with an explanatory drawing. As very little time was expended on this by the Appellant at the appeal stage, and he had already have prepared a case for this for his application stage, it did not result in unnecessary expense being incurred.
13. At the appeal stage the Appellant was largely able to concentrate on those matters where there was a difference of opinion. On its decisions on the various elements of the scheme, I find the suggestion that had it followed the Technical Guidance a different and correct decision would have been made to be wrong. In those areas where there was disagreement between the parties, save for its initial stance on the dormer extension, I found merit in the Council's case. I did not find its actions to have been unreasonable or that this led to unnecessary expense.
14. For the above reasons, the claim for costs fails.

Application B

Case for Torbay Council

15. In essence, the Council's case is that: the appeal was unnecessary; it achieved nothing for the Appellant; the Appellant has misled the Council; and the appeal was a vehicle to claim costs.
16. It says that it was unreasonable of the Appellant to make an appeal to ask theoretical questions relating to PD rights. The purpose of s192 is to allow an applicant who wishes to carry out work to gain confirmation of whether this would be lawful and thus avoid enforcement action.
17. Here, the Council says, it was probably now impossible that the Appellant could not undertake some of the works, given the advanced stage of development at the property. At the very least, the Council says, the proposed development should be capable of being carried out. It says work on the property following the decision on planning application P/2020/1044 meant that this was not the case.

Response of Mr Tom Payne

18. He says that his claim was not unnecessary and that it was not made as a vehicle to claim costs. He wanted to establish what he could do and, as such, the appeal was not merely theoretical. Furthermore, there is nothing in the Act or regulations to preclude him from making a claim.
19. Whilst development at the site might preclude him from undertaking some of what was proposed in the certificate application, the alternative would have been to have made a fresh certificate application to the Council with the likelihood of a subsequent appeal being necessary.
20. He did not mislead the Council, nor was the appeal a vehicle to claim costs.

Findings

21. The questions of whether the appeal was necessary and what it would achieve for the Appellant are matters for the Appellant, not the Council. The Appellant is following his statutory right, set out in the Act, to make an appeal following the refusal of an application for a certificate. He does not have to set out his motives or what he might achieve from it.
22. The Council did not provide me with any evidential basis for its assertion that a certificate application could not be made on a theoretical basis. Often certificate applications do have a theoretical basis and decisions may be used for a number of reasons, some of which may not be apparent to other parties. My finding is that the use of the phrase "proposed to be carried out" in s192 should not be read as restricting applications to those parties that will definitely or even most likely carry out work. This is supported by the use of the 'if', which I have emphasised in the part of s192(2) that reads "*If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful **if** instituted or begun at the time of the application...*". This acknowledges that the work that is the subject of an application might not go ahead; there is nothing in this to say that a theoretical application would not be acceptable.
23. If some of the development that was the subject of the appeal could not be carried out at the time of the application, it was open to the Council to use this as a reason to refuse to issue a certificate. Equally, it was open to the Appellant to challenge this. In any event, I note that the Council said that it refused the totality of the application as it felt that it would be inappropriate and unreasonable to separate the elements. Given this, it is difficult to see how the Appellant could be held to be unreasonable for addressing all of the matters in his appeal. He was entitled to challenge the Council's decision.
24. It might be the case that it would not be possible now to carry out some of the works. However, I cannot be sure what the situation was when the application was made to the Council. In any event, even now, some of the works proposed could be undertaken.
25. From the evidence before me, I do not find that the Appellant misled the Council nor that the appeal was a vehicle for an award of costs.
26. For these reasons, the claim for costs fails.

Roy Curnow

Inspector