

Costs Decision

Site inspection on 7 September 2022

by John Whalley

Inspector appointed by the Secretary of State

Decision date: 4 October 2022

Costs application by Harvey Tongue made in connection with appeal ref: APP/P2365/X/22/3294849 – No. 5 Dean Wood Close, Up Holland, Skelmersdale WN6 0BS

- The application was 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 was made by Harvey Tongue for a full award of costs against West Lancashire Borough Council.
 - The appeal was made by Harvey Tongue against the failure of the Council to issue a certificate of lawful development in respect of the proposed incorporation of former garden land of No. 30 Parliament Street into the garden of No. 5 Dean Wood Close, Up Holland.
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Decision

1. The application for an award of costs is not allowed.

Submissions made by Harvey Tongue

2. The Applicant had been forced to make the appeal as a direct result of the failure of the Council to carry out its statutory duty without good reason. That resulted in unnecessary delay and extra costs for Mr Tongue.

Submissions made by West Lancashire Borough Council

3. The Council said it was regrettable they were unable to deal with the application within the statutory timescale. They had high workloads. It was not possible for the planning department to receive the relevant legal advice and subsequently issue a decision within the timescale.

Inspector's conclusions

4. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process.
 5. In my view, there is no justification to make an award of cost to the Applicant against the Council. The Council did not issue a decision on the application for a lawful development certificate within the applicable time limit. However, they responded to the appeal against non-determination of the application with pertinent objections to the issue of a certificate. I
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allowed the appeal. But costs awards do not go with the outcome of an appeal. Although Mr Tongue said the matter was simple and straightforward, there were aspects of the case such as the unauthorised physical works to separate parts of the original garden to No. 30 Parliament Street, the Applicant's intentions for the land and the period of non-use suggesting a possible abandonment of use that showed otherwise. The appeal was not unwarranted.

6. An application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. In my view, that was not done. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against the Council is not justified.

COSTS ORDER

7. No order as to costs is made.

John Whalley

Inspector