



Costs Decisions

Site visit made on 3 October 2022

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Costs application in relation to Appeal A, Ref: APP/D0840/Y/22/3301107 The Lodge, Bosvathick, Bosvathick Drive, Constantine, Falmouth TR11 5RZ

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, sections 20, 89 and Schedule 3, and the Local Government Act 1972 as amended, section 250(5).
- The application is made by Mr & Mrs Tyrrell for a full award against Cornwall Council.
- The appeal was against the failure of the Council to issue a notice of their decision in respect of application Ref PA22/03613, dated 28 June 2021, within the prescribed period for listed building consent for works described on the application form as to 'provide small extension to allow provision of modern kitchen and bathroom...'.

Costs application in relation to Appeal B, Ref: APP/D0840/D/22/3291296 The Lodge, Bosvathick, Bosvathick Drive, Constantine, Falmouth TR11 5RZ

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972 as amended, section 250(5).
- The application is made by Mr & Mrs Tyrrell for a full award against Cornwall Council.
- The appeal was against the refusal of Cornwall Council to grant planning permission application Ref PA21/06650, dated 28 June 2021, refused by notice dated 25 November 2021, for proposed development described on the application form as to 'provide small extension to allow provision of modern kitchen and bathroom...'.

Decision

1. The applications for awards of costs are refused.

Reasons

2. Parties to planning appeals normally meet their own expenses. However the Planning Practice Guidance ('PPG') explains how costs may be awarded against a party who has behaved unreasonably, and thereby directly caused another party to incur unnecessary expense at appeal.¹
3. The appellants' grounds for a full award of cost in respect of appeals A and B are both related to similar procedural and substantive matters. Procedurally the appellants aver that the Council was unreasonably dilatory in dealing with application Ref. PA21/06650. The appellants calculate a determination period in excess of 21 weeks, relative to the statutory timeframe of 8. In respect of Appeal A, they argue that the Council's failing to register application Ref. PA22/03613 for listed building consent ('LBC'), which only became clear at appeal, was also unreasonable.

¹ Reference ID: 16-028-20140306.

4. Substantively, they contend there was no visit from the Council, an insufficient assessment of the scheme or misunderstanding of it, including in respect of public benefits, and that the scheme was supported by the Parish Council (and otherwise unopposed locally). There is also some suggestion that observations of the Council's heritage officer were not available promptly, or misattributed initially.
5. I accept that, in respect of the application to which Appeal B relates, the appellants had to wait quite some time for the Council's formal position. However, in itself, that does not amount to unreasonable behaviour. An appeal may be made where a decision has not been reached within the statutory timeframe (which does not intrinsically entail a liability for costs). Delays may occur for a variety of understandable or unforeseeable reasons rather than by virtue of unreasonable behaviour. Many Councils presently struggle to issue timely decisions; to justify an award of costs on that basis alone would not achieve anything significant in terms of the purpose for which the costs regime exists.²
6. As set out in the associated appeal decisions, I appreciate the appellants' frustration in respect of the handling of appeal A. That inevitably delayed proceedings, a matter to which I will return. Whilst somewhat tangential to costs, I note that the Council remedied that lacuna and apologised. More significantly, however, as with appeals against non-determination there is also an appeals process in respect of a validation dispute.³ Furthermore, knowing the outcome of the planning application to which appeal B relates, via Council decision dated 25 November 2021, the appellants explain that the application for LBC to which appeal A relates 'must surely have been a logical certainty.' Therefore whilst there were shortcomings procedurally with the handling of applications Ref. PA21/06650 and PA22/03613, in the light of the foregoing that does not represent unreasonable behaviour.
7. It is unclear from the evidence before me whether or not an officer undertook a site visit, noting that Bosvathick Lodge is partially visible from nearby public vantage points. Though it may be prudent to undertake a site visit, for example to check features, there is no obligation in that respect. In a similar vein to my reasoning in respect of procedural arguments, it is common for authorities not to undertake site visits on occasion (for example on account of expediency).
8. Alleged misunderstandings in respect of the scheme are stated by the appellants to have occurred, but are not explained. There are, it seems, no errors of fact identified by them in the Council's appeal statement (nor in the comments of the heritage officer regardless of when they were available or their initial attribution). In my view the Council have supported their position opposing the scheme with accurate observations of the site, its surroundings, and with reference to relevant provisions of the development plan. 'Misunderstandings' therefore appear to be a difference of opinion on the merits of the scheme, for example the relationship between the design of the scheme

² PPG Reference ID: 16-028-20140306 explains that one aim of the costs regime is to 'encourage all those involved in the appeal process to behave in a reasonable way...'.

³ Under article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended.

and existing nature of Bosvathick Lodge. That is inevitable in appeals and not indicative of unreasonable behaviour.

9. The appellants' appeal statements focusses on what they contend are the substantial public benefits of the scheme. I note that the PPG gives as one example of unreasonable substantive behaviour preventing or delaying development which should clearly be permitted.⁴ I reached a different view to the Council on the scheme, and accept that public benefits are referenced only in passing in the officer report associated with the Appeal B scheme.
10. However the Council have addressed public benefits more substantively at appeal. I also reasoned in the associated appeal decisions that there may have been other ways in which similar benefits could have been achieved. Circumstances are not clear-cut. Therefore, notwithstanding my overall conclusion, again the bearing of public benefits is nuanced. That relates to judgement rather than reflecting a manifest shortcoming. Although Parish Councils and local residents play an important role in planning, neither the existence of support for a scheme, nor the absence of objection, indicate that a proposal is acceptable.
11. I appreciate the appellants' expenses, as is consistent with the remit of the costs regime, have been set out cursorily (at paragraph 5.3 of their application for costs in respect of Appeal A). However the PPG is clear that although costs applications may relate to events before an appeal is made, an award cannot extend to costs incurred beforehand.⁵ Thus the appellants' first indicative cost, i.e. 'the new, second LBC application' could not legitimately be awarded. Similarly the PPG sets out that costs cannot relate to 'indirect losses, such as those which may result from alleged delay in obtaining planning permission'.⁶ Therefore any loss in rental income, the appellants' third and final indicative cost, is also ineligible to be claimed.
12. The appellants elected to appeal against the Council's decision in respect of appeal B. As set out above, knowing their position in that respect, the Council's position in respect of Appeal A was a 'logical certainty'. In appealing against one decision, much of the same ground would be covered as in the other. It is therefore not clear that any additional expense has been incurred in appealing twice as opposed to once. In other words wasted expense has not been demonstrated in respect of the appellants' second indicative cost, i.e. in respect of 'this new, second Appeal.' Consequently even had the Council acted unreasonably, and in my view that was not the case, there is no robust justification for an award of costs in the terms within which it has been claimed.
13. On account of the foregoing reasons, although I understand the appellants' motivation, based on the evidence before me I find that no action or inaction taken by the Council amounts to unreasonable behaviour directly resulting in unnecessary or wasted expense at appeal.

⁴ Reference ID: 16-049-20140306.

⁵ Reference ID: 16-032-20140306.

⁶ Reference ID: 16-032-20140306.

Conclusion

14. Having taken account of all other matters raised, and with regard to relevant elements of the PPG, for the above reasons I conclude that an award of costs is not justified in this instance.

Tom Bristow

INSPECTOR