



Costs Decision

Inquiry Held on 19 October 2022

Site visit made on 18 October 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

**Costs application in relation to Appeal Ref: APP/P1615/C/21/3278524
Land at Woodland adjacent to Coppice Road, Lower Lydbrook as identified
by Land Registry Title GR 123047, Gloucestershire, GL17 9RJ**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Forest of Dean DC for a full award of costs against Mark Dew.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the construction of a building, having the appearance of a dwelling house, with direct connection to the main grid electrical supply and the construction of adjoining stone walling, stone steps and associated groundworks ancillary to the construction of the building.
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Decisions

1. The application for a full award of costs is granted.

The case made by the Council

2. The ground (a) appeal was manifestly contrary to the development plan and no proper grounds have been claimed otherwise. No evidence of any exception to policy has been provided nor how it could possibly be considered to be repair and maintenance. The Ground (c) appeal was hopeless from the start and nothing was heard at the Inquiry to the contrary. No evidence at all was provided for the ground (d), (f) or (g) appeals.

The response by the Appellant

3. Entitled to take a different view to the 1992 Inspector on the question of abandonment as no specific finding made by him. Since 1992 policy has changed and we now have the titled balance in our favour and have argued why planning permission should be granted in that case. In particular the demolition of a perfectly good house would be for no good reason. On (d) we said the house went back to the 19th century and on (g) it is commonsense that more time would be needed, but in any event no time was taken up at the inquiry on (d), (f) or (g).

Conclusions

4. I agree that the ground (c) appeal was hopeless from the beginning. There clearly had been development that required planning permission and this was pointed out by me in a pre-Inquiry note but this ground was persisted with. It

seems the appellant relied on the fact that there had been a house on the site since Victorian times and possibly before then, that it had not been abandoned and so he was merely restoring it. This ignored the entire weight of evidence from photographs and his own historic building survey that regardless of the abandonment issue little of the historic cottage remained and so rebuilding it was development that required planning permission.

5. In considering the ground (a) appeal, the development of a new house was so clearly contrary to policy, both in the development plan and the NPPF that despite the tilted balance it could only have a chance if it could be shown the old cottage had not been abandoned and so it was a re-build of an existing house and not a new dwelling in a woodland setting. However the question of abandonment had effectively been determined in 1992, and the appellant's attempt to argue otherwise was misguided. Even so, the four tests for abandonment were abundantly passed and it would take more than Mr Dew saying he didn't agree to change that. This should have been obvious from the start.
6. No evidence was provided for (d), (f) or (g) at any point. The appellant's own evidence was that work began in 2020 so the 4 year period could not succeed whatever else was decided about the appeal. It is not commonsense that it would take more than 6 months to demolish the house, it could easily be done in a week.
7. I accept that Mr Dew appears to have been unrepresented until quite late in the process but that was his choice, and he still has a duty to not pursue a manifestly unwinnable appeal, particularly one that relied on technical issues such as abandonment. The basis of his argument seems to have been that in his opinion everything he had done was perfectly acceptable but that is not how the planning system works. I also accept that little or no time was spent at the inquiry on grounds (d), (f) and (g), but time was spent by the Council in preparing their statement and their proof. In any event I consider the appeal had so little chance of success from the outset that to pursue it was unreasonable and I shall make a full award of costs.

Costs Order

8. 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 Mark Dew shall pay to Forest of Dean DC, the costs of the appeal proceedings described in the heading of this decision. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Mr Dew, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

Inspector