



Costs Decision

Site visit made on 18 October 2022

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2022

Costs application in relation to Appeal Ref: APP/K0425/C/21/3283625 Land to the south of 7 Grayling Close, Marlow, Buckinghamshire SL7 2BA

- The application is 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 is made by Buckinghamshire Council for a partial award of costs against Mr Ben Cottman.
 - The appeal was against an enforcement notice alleging without planning permission, a material change of use of the land to residential garden, together with the undertaking of engineering operations to level the land, and the erection of decking, fencing, BBQ shelter and retaining walls.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). "Unreasonable" has its ordinary meaning, as established by the Courts¹. The PPG paragraph 031 explains that unreasonable behaviour in the context of an application for costs can be either procedural-relating to the process, or; substantive-relating to the issues arising from the merits of the appeal.
3. The application for an award of costs was made in writing, in accordance with the guidance at paragraph 035 of the PPG. A partial award of the Council's costs was sought on procedural grounds, for the reasons summarised as follows. One of the reasons for issuing the enforcement notice concerned flood risk. In response to the appeal, the Council's written submissions explained why the appellant's submitted flood risk assessment (FRA) was inadequate. A similar FRA had accompanied a refused planning application. It was only at the final comments stage that the appellant submitted further information relating to flood risk, requiring the Council to undertake additional work at short notice.
4. At paragraph 052, the PPG advises that appellants are required to behave reasonably in relation to procedural matters at the appeal, including by complying with the requirements and deadlines of the appeals process. The non-exhaustive list of examples of where an appellant may be at risk of an award of costs on procedural grounds include introducing fresh and substantial

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen. Paragraph 051 of the PPG advises that all evidence should be considered, alongside any extenuating circumstances, when assessing the reasonableness of an appellant's behaviour concerning the procedures at an appeal.

5. The appellant evidently sought to engage with the Environment Agency (EA) with the aim of resolving the flood risk objection during the determination period of the planning application. However, the Council felt unable to delay determining the application, which was then refused. The enforcement notice was issued shortly after the application was decided. An appeal was lodged against the notice and negotiations resulted in the EA withdrawing its objection. However, those negotiations were only concluded long after the date by which the enforcement appeal had to be made.
6. At paragraph 8.2.10.2, the *Procedural Guide: Enforcement notice appeals – England* makes it clear that new material should not be introduced at the final comments stage. Even so, the background to the submission of the further information on flood risk is to a marked extent rooted in the Council's apparent inability or unwillingness to accommodate negotiations to try to resolve or narrow the matters at issue, either during the application stage or prior to the issuing of the notice. With this in mind, it is unlikely that the timing of the further information being submitted could have been significantly different. I appreciate that the Council probably felt constrained in its approach by the strict timescales for determining applications. That however cannot sensibly be held against an appellant who, as in this instance, has genuinely sought to narrow the differences between the main parties to the appeal.
7. As a result, I have found little indication of the appellant having acted in a manner either similar to the example of unreasonable behaviour in the PPG referred to above, or similar to any of the other examples in the PPG relating to the appeal procedures. Moreover, for the conditions for an award of costs to be met there must also be clear evidence of the Council having incurred wasted expenditure in the appeal. No firm evidence was supplied of any substantive elements of work having been undertaken by the Council as a consequence of the submission of the further information. As far as I was made aware, the Council did not undertake a detailed assessment of the further information. It is therefore difficult to establish exactly how the appellant's actions have resulted in the Council incurring any meaningful wasted expenditure.
8. Accordingly, the conditions for an award of costs in the PPG at paragraph 030 have not been met.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR