
Costs Decision

Site visit made on 3 January 2023

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Costs application in relation to Appeal Ref: APP/D0840/C/22/3304909 Lovertor, Tregonhawke Cliff, Military Road PL10 1JH

- 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 Dr Jasper Joseph-Lester for a partial award of costs against Cornwall Council.
 - The appeal was against an enforcement notice alleging the extension of the western elevation of the chalet, the installation of patio doors and the creation of a raised decked area and pergola structure.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance 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.
3. In addressing this claim, I shall firstly set out the parties' positions and then my findings.
4. The Appellant's claim for partial costs is made in respect of that part of requirement (2) in section 5 of the Notice 'What You Are Required To Do' that states the chalet should be reinstated in accordance with permission 592/1029/F.
5. He states that the baseline to which any development should be pared back is an important point. When the Council visited the site in 2018, it should have measured the chalet and recorded this. Further, it should have ensured that the requirement was accurate. The upshot of the Council's case is that it requires reversion to something that never existed, as the building was never built in accordance with 592/1029/F. In complying, he would be worse off, and this is unreasonable.
6. In response, the Council sets out the start point that parties in a planning appeal normally carry their own expense. It says that it was entirely appropriate to issue a Notice and setting the baseline position as the 1992 planning permission in the requirements was deemed to be acceptable. It says it is for the Appellant to prove what is immune from enforcement action, and what was submitted was insufficient. In this respect, the scaled drawings submitted by the Appellant, dated August 2022, were of little use. The chalet should have been built in accordance with drawings approved under planning

permission 592/1029/F; it was not. The Council did not measure the building in 2018, as it was obviously not what was approved. The Council did not need to provide a survey of the building, the onus was on the Appellant to make his case. It says that it did not act unreasonably, citing *Manchester City Council v SSE & Mercury Communications Limited* [1998]. Its approach was logical and well-reasoned and did not cause the Appellant unnecessary or wasted expense.

7. The Appellant's response is that the Notice did not relate to the building of the main chalet, but related to an extension, deck and pergola. He submits that what was built was done without planning permission and was done in the 1990s so immune from action. The Council's actions amounts to unreasonable behaviour, and he sets out that the Council's misapplication of the *Manchester City Council* case further highlights this.
8. I find that whether or not the Council chose to measure the building in 2018 to be immaterial. It says that it was obviously not the building granted planning permission, and I have little reason to doubt that this is the case. However, the main issue here is whether it was reasonable to require the chalet to be reinstated in accordance with planning permission 592/1029/F.
9. The alleged breach of planning control in the Notice is the erection of an extension to the chalet, installation of patio doors and creation of a raised deck area and pergola. The Council's Statement of Case confirms that the extension referred to is the small addition which houses a wc and shower. That this is the case is illustrated in the description of the photographs on pages 10, 11 and 12. The Notice does not allege the erection of the chalet without complying with the approved plans and, as such, there was no need for the Appellant to prove compliance with the earlier approval.
10. Whilst it was appropriate for the Council to issue a Notice against the breach of planning control, as this did not include non-compliance with planning permission 592/1029/F so the requirements should not have required reinstatement in accordance with the permission. This is unrelated to the Notice's allegation and goes beyond what was reasonably required to remedy the breach. Whilst the requirement was unreasonable, it was correctible. Nonetheless, this caused unnecessary expense to be incurred by the Appellant in addressing this matter.

Costs Order

11. 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 Cornwall Council shall pay to Dr Jaspar Joseph-Lester, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the requirement to reinstate the chalet in accordance with permission 592/1029/F; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Cornwall Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Roy Curnow INSPECTOR