
Costs Decision

Site visit made on 7 February 2023

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27th February 2023

Costs application in relation to Appeal Ref: APP/D0840/W/22/3305653 12 Back Lane, Angarrack, Hayle TR27 5JE

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Cornwall Council for a partial award of costs against Mr Nat Lloyd.
 - The appeal was in connection with the refusal of planning permission for what was described as 'the removal of an existing outbuilding and shed; new outbuilding'.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) tells us that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Examples of unreasonable behaviour by an appellant that may lead to a procedural award of costs include only supplying relevant information at appeal when it was requested, but not provided, at application stage; and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work, that would not otherwise have arisen.
3. Linked to that, for reasons that I come too below, an appellant is at risk of an award of costs being made against them if the appeal, or ground of appeal, had no reasonable prospect of succeeding.
4. As I have noted in my parallel appeal decision, work on the new outbuilding commenced before the application for planning permission was made. The Council dealt with the application on the basis that the proposal involved 'retrospective planning permission for the removal of existing outbuilding and shed, and replacement outbuilding and parking space'. There is nothing wrong in principle with making an application for planning permission for development that has already taken place or commenced.
5. However, in dealing with the application before it, the Council made plain that because of the nature of the outbuilding, and the parking space above, it would require details to show that the structure was adequate to support the loads involved, and that it would not place undue strain on the existing retaining structure it is set against. Those details were not forthcoming during the application process and the Council refused planning permission because of concerns about structural stability, amongst other things.

6. An appeal was then lodged but the documentation submitted with that appeal did not include proper structural details. These details were only submitted on behalf of the appellant after the appeal had been lodged. This late material was accepted by the Planning Inspectorate in the interests of fairness, and I have considered it in dealing with the appeal.
7. Nevertheless, I consider this to be unreasonable behaviour for a number of reasons. First, this information, which is clearly of fundamental importance, has only been provided at appeal stage, when it could and should have been submitted earlier. Moreover, in presenting this information at appeal stage, the appellant has involved the Council in work analysing the information, in the course of dealing with the appeal.
8. This unreasonable behaviour on the part of the appellant has therefore resulted in the Council incurring unnecessary expense in the appeals process, as described in the PPG. A partial award of costs is therefore justified.
9. I would also observe that lacking the necessary structural information, the appeal, as submitted, had no reasonable prospect of success. On top of that, as I observe in my parallel appeal decision, the structural information that was eventually submitted suggests that the outbuilding that has been built, and which the appellant sought to retain through the original application for planning permission, would need to be largely rebuilt to perform in a structurally acceptable manner. While that might be possible to achieve through the judicious use of conditions attached to any grant of planning permission, it does serve to underline the unreasonableness of the appellant's position on this matter.

Costs Order

10. 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 Mr Nat Lloyd shall pay to Cornwall Council, the costs of the appeal proceedings described in the heading of this decision limited to those involved in dealing with the third reason for refusal relating to structural matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Mr Nat Lloyd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Griffiths

INSPECTOR