



Costs Decision

Inquiry held on 22 & 23 November 2022

Site visit made on 21 November 2022

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2023

Costs application in relation to Appeals A & B Refs:

APP/P0119/C/21/3286651 & 3286652

Land at The Rosary, Chesley Hill, Siston, South Gloucestershire, BS30 5NE

- 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 South Gloucestershire Council against Mr Mark Palmer and Ms Nicola Garland (the appellants in Appeal A and Appeal B respectively) for a full award of costs.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the subdivision of the former single residential planning unit to create an additional new residential planning unit, including the erection of a residential dwelling within that new unit.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The Council's application is that the appellants' behaviour has been unreasonable for two reasons. First, that Mr Palmer provided information that is shown to be manifestly inaccurate or untrue, which is one of the examples in the list of unreasonable behaviours which may result in an award of costs against appellants, listed in Paragraph 52 of the PPG's Appeals section.
4. Secondly, that the proceedings were unnecessarily prolonged by the appellants insisting that the subdivision of a planning unit is not a material change of use and that the Building the subject of the notice could not be removed as part and parcel of that material change of use, contrary to well-established caselaw, which the appellants should have been aware of having been professionally advised.
5. In relation to the first reason, it appears to me that for the reasons set out in my appeal decisions, Mr Palmer is more than likely to have provided information that is inaccurate or untrue. That is because either what he said in response to the Council's Planning Contravention Notice (PCN) on 11 August 2021 – that it was an independent dwelling – was inaccurate or untrue, or more likely, his case at the Inquiry was, namely that the Building was first used for incidental purposes before he started living in it. Both cannot be accurate

- and true. Either way, that is unreasonable behaviour in that I consider that he attempted to deceive the Council in 2017 and is attempting to deceive me now.
6. In relation to the second reason, I take the appellants' point that the subdivision of a planning unit will not automatically amount to a change of use, let alone a material one, as say in the case of the subdivision of an office block to two offices or a farm holding to two farm holdings. Hence my correction of the breach on the notice. However, it is fairly obvious that what is alleged as the breach in the notice is a material change of use by the creation of a new additional residential planning unit by sub-dividing The Rosary's land, as the appellants, advised by a professional team, have argued at the Inquiry.
 7. But was it unreasonable in principle for the appellants to argue that the specific circumstances of this case could amount to a challenge to this established caselaw? In principle and on balance I don't think it was, given the serious financial consequences for them of not doing so, particularly in relation to ground (f).
 8. I have found that there has been unreasonable behaviour by the appellants in respect of the first reason for the Council's costs application. Even were I to also have found the second reason also amounted to unreasonable behaviour, I do not agree with the Council that an Inquiry would have been unnecessary.
 9. Given the dispute of facts in this case – for instance in relation to when works were done and what exactly was done when and exactly how the Building and The Rosary are used – I consider that an Inquiry with its adversarial approach whereby evidence was cross-examined by experienced advocates and with evidence under oath, was always likely to have been the best method for determining these appeals and certainly the best way for the appellants to explain what happened when in relation to their family circumstances.
 10. I accept that if well established caselaw had been accepted by the appellants the time spent at the Inquiry might have been reduced accordingly. But given the seriousness of the allegation and its consequences if established, the Inquiry would still have likely ran onto a second day. The Council has not therefore wasted any expense in conducting these appeals.
 11. Therefore, although at least some of the appellants' behaviour has been unreasonable, wasted expense has not occurred and an award of costs is not warranted.

Nick Fagan

INSPECTOR