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## Costs Decision

Inquiry Held on 15 August 2023

Site visit made on 15 August 2023

**by H A Orr MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27<sup>th</sup> September 2023

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### **Costs application in relation to Appeal Ref: APP/D3505/X/22/3291449 3 Stone Cottage, Bury Road Suffolk IP30 0JJ**

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Paul Willis for a full award of costs against Babergh District Council.
  - The Inquiry was in connection with an appeal against the refusal of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for the use of the building known as 3 Stone Cottages, (the Summerhouse), as a separate dwelling house.
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### **Decision**

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

### **The submissions for the appellant**

2. There are two costs applications, both submitted prior to the Inquiry in writing. It was agreed that both should be considered together. Both applications relate to broadly similar matters. In summary, the appellant considers that the Council had little by way of evidence of their own and so should have withdrawn the enforcement notice. They further submit that the Council failed to objectively engage with them during the application and appeal processes, and have failed to substantiate their reasons for refusing the application. They also failed to supply copies of site inspection reports and a number of historic documents when requested by the appellant.

### **The response by Babergh District Council**

3. In short, it is the Council's response that the submitted applications for costs are not concise or detailed enough to establish that additional expenses have been incurred. With regard to the requested information, the Council considers that they have provided a number of the requested documents as appendices to their evidence.

### **Reasons**

4. Parties in planning appeals and other planning proceedings are normally expected to meet their own expenses. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly

- caused another party to incur unnecessary or wasted expense in the appeal process.
5. The issues surrounding the enforcement notice fall outside the scope of this appeal, with the appellant having the opportunity to appeal the notice before it took effect. They failed to take that opportunity.
  6. Turning to the availability of documents requested by the appellant. These appear to have been requested through a Freedom of Information (FOI) request and include a number of documents purported to have been presented to the Courts in respect of the warrant obtained to enter the Land. It is not clear how any of these documents would have been pertinent to the appellant's case. Moreover, any complaint relating to an FOI request should be pursued through the relevant Information Commissioner.
  7. I acknowledge that the Council did however, provide additional documents with their Proof of Evidence (POE), some of which could have been provided to the appellant at an earlier stage. At the time the POE's were exchanged, the appellant objected to their inclusion, claiming that they constituted new evidence. However, the substance of their evidence did not change or introduce additional substantive new issues. Rather it clarified how the Council had assessed the appellant's evidence. To my mind, the appellant had the opportunity to consider and comment upon all of the Council's evidence in advance of the Inquiry.
  8. Similarly, whilst I accept that it is good practice to record verbal conversations that take place at site visits, it is not a legal requirement. Moreover, I have nothing before me to suggest that other case notes, or documents exist, that were withheld unreasonably, or would have advanced the appellant's case, resulting in wasted or unnecessary costs.
  9. At the Inquiry and through their evidence, the Council defended their position. They provided a number of photographs, officer reports and other documents. The difference of opinion over the precise use of the appeal building is a fact and degree judgement. It will be seen from my decision in the substantive appeal, that having listened to and considered all of the available evidence I have come to a different view to that of the appellant.
  10. Accordingly, on the basis of the information before me, I do not consider that the Council has acted unreasonably, either in the defence of their position, or in the procedure throughout this appeal, such that the applicant has incurred unnecessary or wasted expenses.

### **Conclusion**

11. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated in this instance. Accordingly, I refuse the application for an award of costs against the Council.

*Hilary Orr*

**INSPECTOR**