



Costs Decision

Site visit made on 16 January 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2024

Costs application in relation to Appeal Ref: APP/E3335/C/23/3328871 10 Victoria Avenue, Chard TA20 1HE

- 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 Mrs David Pape for a full award of costs against Somerset Council.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of an independent dwelling.
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Decision

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

Reasons

2. Parties in planning appeals are normally expected to meet their own expenses. However, the Planning Practice Guidance (PPG) chapter on appeals advises that 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). At paragraph 031, the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. The applicant sought a full award of their costs, on procedural and substantive grounds. The application was made in writing in accordance with the PPG at paragraph 035. An award of costs is sought on the basis that the Council acted unreasonably in its actions leading up to the issuing of the enforcement notice and that, because the building erected was 'permitted development,' the Council has been unable to substantiate their case at appeal.
4. At paragraph 047, the PPG provides a non-exhaustive list of examples of unreasonable behaviour relating to the procedures in an appeal. These include lack of co-operation with the other party or parties, delay in providing information or other failure to adhere to deadlines, failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined, withdrawing an enforcement notice without good reason and providing information that is shown to be manifestly inaccurate or untrue.
5. Paragraph 048 of the PPG stresses that a Council must carry out an adequate investigation prior to issuing an enforcement notice. A Council will be at risk of an award of costs being made if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate.

6. At paragraph 049, the PPG provides a non-exhaustive list of examples of unreasonable behaviour relating to the substance of the matter at appeal. These include failing to produce evidence to substantiate each reason for refusal on appeal, acting contrary to or not following well-established case law and not reviewing their case promptly following the lodging of an appeal.
7. I have no doubt that the applicant disagrees profoundly with the Council's approach to this matter, which led to the issuing of the notice. Nevertheless, from the initial investigation the Council clearly concluded that the development carried out amounted to the erection of a dwelling. The planning merits of erecting a dwelling at the appeal property have been fully explored in two planning appeals in recent years. The building erected may well differ significantly in terms of its external appearance from what was proposed in those schemes, but it is still a dwelling for planning purposes. The Council is not bound to enter into protracted negotiations prior to issuing an enforcement notice where it is considered that no practical purpose would be served by doing so, for example where, as in this case, they consider that submitting a retrospective planning application would not remedy the breach or the associated planning harm.
8. The information supporting the Council's case at appeal was submitted in accordance with the relevant deadlines and there is no sound reason to believe that it is fundamentally inaccurate. The Council set out why they considered that the matter alleged in the notice was not 'permitted development.' Whilst not sharing all of the Council's findings, I nevertheless reached a similar overall conclusion on the basis of the available evidence and the Council was able to substantiate their case at appeal.
9. Therefore, there is little before me which clearly shows that the Council have acted in a manner similar to any of the examples of unreasonable behaviour referred to above relating to the appeal procedures, the matters leading up to the issuing of the notice or the substance of the case. Nor is there any other firm evidence which clearly suggests that the Council have otherwise acted unreasonably in the appeal. It follows that the conditions for an award of costs in the PPG at paragraph 030 have not been met.

Conclusion

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

Stephen Hawkins

INSPECTOR