



Costs Decision

Inquiry held on 7, 8 and 16 February 2024

Site visit made on 7 February 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st June 2024

Costs application in relation to

Appeal A Ref: APP/Z3635/C/23/3320593

Appeal B Ref: APP/Z3635/C/23/3320594

Appeal C Ref: APP/Z3635/C/23/3320595

Riverbank, 1 The Creek, Sunbury-on-Thames, TW16 6BY

- 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 Mr Anthony Brindley, Mrs Zoranna McDermott and TW16 Ltd for a full award of costs against Spelthorne Borough Council.
 - The inquiry was in connection with an enforcement notice alleging the unlawful development of a new dwelling house, garage, boathouse, associated terracing and planters, steps, walls, pillars and hardstanding.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 Applicant's costs application, which was submitted in writing, seeks a full award of costs against the Council. The Applicants say the Council's behaviour was unreasonable on a substantive basis, for several reasons. In particular, they say the reasons for issuing the enforcement notice (EN) were not substantiated with evidence; they say Council made vague, generalised and inaccurate assertions about the development; they say the Council's objections to the scheme could have been overcome by conditions; they say the Council should not have objected to the as-built scheme when it was almost identical to the one originally consented; and finally they say the Council did not review their case promptly following the appeal being lodged. These points are considered in turn.
4. The EN sets out a number of reasons for issuing the notice, which include the timing of the development and alleged harm relating to green belt, design and flood risk. The Council prepared a thorough Appeal Statement and Proof of Evidence, which set out comprehensive detail on each of these reasons. The Council's case has therefore been clear throughout the appeal.
5. In particular, it was clear from these documents that the Council accepted the previous Inspector's finding that the 2018 Permission had lapsed, and assessed

the as-built scheme accordingly, without reference to a fallback. Whilst I have reached a different conclusion to the previous Inspector, it was not unreasonable for the Council to rely on this earlier decision. Indeed, reliance on appeal decisions is commonplace during the appeals process.

6. The application of green belt exception criteria within the Framework is not straightforward, and is open to a degree of interpretation. Whilst I reached a different conclusion to the Council with regard to these provisions, it was not unreasonable for the Council to conclude the development would not constitute limited infilling in a village, particularly given the uncertain status of the area in which the appeal site is located (as a town or village).
7. In terms of the ground (d) appeal, the burden is on the appellants to demonstrate their case. I concluded that the Applicants' evidence was not sufficiently precise and unambiguous to demonstrate the development was immune from enforcement, and therefore found the Council's case on this point to be justified.
8. Given the serious shortcomings with the Applicants' flood risk assessment, the potential flood risk impact of the as-built scheme could not be ascertained, a position corroborated by the Environment Agency's objection to the scheme. This means the objections to the as-built development could not readily be overcome by condition.
9. As highlighted in the appeal decision, the as-built scheme differs in numerous ways from the scheme consented by the 2018 Permission. It was therefore reasonable for the Council to assess the as-built scheme on its own merits, particularly given the previous Inspector's finding that the 2018 Permission had lapsed.
10. Consistent with the Council's position, I have concluded that permitted development rights would not apply to discrete components of the development. Whilst it is possible that the boathouse could be acceptable in its own right, I felt unable to reach a clear conclusion on this point given the shortcomings with the flood risk assessment. Once again, the Council's stance on this point was not unreasonable.
11. More generally, I note that the Council highlighted an inaccuracy with a plan attached to the EN at an early stage, and submitted a substitute plan to account for part of the boundary wall which had previously been consented. This demonstrates that the Council sought to narrow the issues in dispute where possible.
12. Bringing these points together, I find that the Council acted reasonably in respect of the appeals, which is reflected in the ultimate outcome of the appeal decisions. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

James Blackwell

INSPECTOR