



Costs Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Costs applications in relation to Appeal Ref: APP/FO114/C/22/3307537

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 Bath and North East Somerset Council for a partial award of costs against Mr Scott Adams
 - The appeal is against an enforcement notice relating to the erection of a two storey, semi-subterranean building, the creation of a hardstanding area and the formation of an access track.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against the party who has behaved unreasonably and therefore caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Council's application is as a consequence of the appellant submitting additional ecological information at the hearing. It is noted that the report is dated two weeks prior to the hearing date which would have provided the opportunity to present this additional evidence for the Council to consider in advance of the hearing. In the event this has led to an additional response having to be prepared by the Council's Ecologist to comment on the additional information.
4. The appellant, in response, seeks to justify the late submission of evidence on the basis that the bat survey is time sensitive and was carried out at the first available opportunity after the potential use of the site by bats was established. A comprehensive bat survey was not carried out but it was necessary to point out that there had been a change of circumstances outside the appellant's control during the life of the appeal, namely the use of the building by statutory protected species. Given the dates for the hearing statements and final comments, it was not possible to submit the ecology findings in advance of the commencement of the hearing itself.
5. Paragraph 52 of the Guidance provides examples of unreasonable behaviour by an appellant that could give rise to an award, including introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen. The Council considers the submitted document not to be substantial with limited evidence to substantiate the findings put forward by the appellant. Despite this, it was necessary to

respond to this newly submitted information, regardless of the lack of evidence or its quality.

6. The failure of the appellant to notify the Council or the Planning Inspectorate prior to the hearing of the likelihood that additional evidence was being prepared and to explain the exceptional reasons for its submission, and the fact that it clearly had been prepared two weeks before the hearing, represents unreasonable behaviour. Earlier notification could have allowed the Council to have responded to the evidence at the hearing.
7. The parties involved in appeals subject to the hearing procedure are notified of the strict timetable that the parties should adhere to and to the potential consequences of the submission of late documents. At the hearing the appellant's agent advised me that he thought that documents could be submitted at the hearing. Whilst this is at my discretion, I need to be satisfied that the content of the document is not covered by evidence already received, that it is relevant and necessary for the decision and that it would be procedurally fair to all parties. In the absence of the Council's Ecologist, I determined that the most efficient course of action would not be to adjourn the hearing but to deal with the issues arising through written representations. Additionally, the appellant was advised that this could lead to an application for a partial award of costs, which it has done.

Conclusions

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

Costs Order

9. 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 Scott Adams shall pay Bath and North East Somerset Council the costs of the appeal proceedings described in the heading of this decision limited to those additional costs arising from the late submission of ecology information; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. Bath and North East Somerset Council is invited to submit to Mr Scott Adams, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as the amount.

P N Jarratt

INSPECTOR