



Costs Decision

Hearing held on 9 July 2024

Site visit made on 9 July 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 8 August 2024

Costs application in relation to Appeal Ref: APP/T3725/C/23/3318902

Nova Equestrian, Glasshouse Lane, Lapworth, Warwickshire B94 6PZ

- 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 Warwick District Council for a partial award of costs against Mr Talib Khan.
 - The appeal was against an enforcement notice alleging the erection of a building.
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Decision

1. The application for a partial award of costs is allowed.

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. The PPG identifies the aim of the costs regime as including encouraging all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case.
3. The application for costs was submitted by the Council the day before the hearing and in accordance with advice contained within the PPG¹. This states that all costs applications must be formally made to the Inspector before the hearing is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing.
4. The Council considers that the appellant's late withdrawal of their appeal on ground (d) caused unnecessary and wasted expense in the appeal process relating to preparing its case on the ground (d) appeal. It is claimed that this was the result of 'manifestly inaccurate information' concerning when the building was said to be substantially complete. Accordingly, the Council considered that the ground of appeal had no reasonable prospect of succeeding.
5. To succeed on ground (d) it was for the appellant to show that on the balance of probabilities the building was substantially complete by 19 October 2017². The Council claims that the basis of the appellant's ground (d) appeal was that the building was substantially complete by 22 February 2019. However, this stance is said to have changed when the appellant's full Hearing Statement was submitted to accept that the relevant date was 19 October 2017.

¹ Paragraph: 035 Reference ID: 16-035-20161210

² First enforcement notice issued 19 October 2021

6. To corroborate their ground (d) appeal the appellant submitted a signed Statutory Declaration dated 22 November 2021 which stated that "The external elevations (four walls, windows, doors and the roof) were completed in September 2017 and the building was weathertight and waterproof." The appellant's supporting Statement of Case also set out at paragraph 4.7 that the building was substantially complete by September 2017.
7. Photographic evidence contained within the Council's Hearing Statement from July 2023 contradicted the appellant's claim showing the building with exposed roof timbers and yet unfinished. The photograph was taken on 13 January 2018 and confirmed by meta data. The conflicting evidence considering immunity of the building from enforcement action³ was raised by the Planning Inspectorate on 2 May 2024. The appellant was advised that if they wished to maintain their position and proceed with the appeal on ground (d), the procedure would be changed to an Inquiry. The appellant subsequently withdrew their appeal on ground (d) on 15 May 2024. While no specific reason was provided at the time, I acknowledge their reasons set out in response to the application for costs.
8. Notwithstanding this, while the appellant says that they had concerns about the Council's evidence regarding the completion of the building, the appellant chose to withdraw their ground (d) appeal thereby removing their opportunity to question the validity of the Council's evidence. It is also noted that no further submissions were received from the appellant at the final comments stage when there would have been an opportunity for them to respond to the Council's statement.
9. Overall, I consider that unnecessary and wasted expense was experienced by the Council in preparing for its case on the ground (d) appeal. The Council's evidence brought into question the authenticity of the appellant's statutory declaration. By not responding to the inclusion of the photograph at the final comments stage and subsequently withdrawing the ground (d) appeal, when the conflicting evidence was put to the appellant, leads me to consider that the ground (d) appeal had no real prospect of succeeding from the start and that this was unreasonable behaviour that caused the Council to incur unnecessary or wasted expense.

Costs Order

10. 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 the appellant, Mr Talib Kahn, shall pay to Warwick District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending the appeal on ground (d). Such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to the appellant, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S A Hanson

INSPECTOR

³ s171B of the Town and Country Planning Act 1990