

Costs Decision

Site visit made on 29 August 2024

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Costs application in relation to Appeal Ref: APP/P1615/W/24/3336848 33 Ford House Road, Newent, GL18 1LQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Forest of Dean District Council for a full award of costs against Mr & Mrs T Godfrey.
 - The appeal was made against the Council's failure to give notice within the prescribed period of a decision on an application for planning permission.
-

Decision

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

Reasons

2. The *Planning Practice Guidance* (the Guidance) advises that 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.
 3. The basis for the Council's costs application is set out in writing. In summary, it contests the appellants' claim that the application was not determined within the appropriate period. Additionally, regarding the Guidance's advice, the Council take the view that the application and appeal were a re-run of an earlier identical proposal which had recently been refused on appeal, and the current appeal had little or no prospect of success. The Appellants have not responded to the application.
 4. Irrespective of the initial basis for the appeal, judging from the appellants' final comments and reliance on the documentation submitted with the original application, they disagreed with the Council's reasons for refusal, as transmitted to them later. That being the case, the Council was faced in any event with the work involved in administering and responding to an appeal, and the costs entailed in that.
 5. The Guidance provides advice on the type of behaviour which may give rise to a substantive award against an appellant. It provides that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. This may occur, as is the case here, when the appeal follows a recent appeal decision in respect of the same, or a very similar, development on
-

the same, or substantially the same site where an Inspector decided that the proposal was unacceptable, and circumstances have not materially changed in the intervening period.

6. For the reasons set out in my decision letter on the substantive appeal, I concluded that no new, fresh or convincing evidence or reasoning had been produced or submitted to persuade me that I should arrive at a different decision to that made by the previous Inspector.
7. I therefore agree with the Council's point that this was, in reality, a re-run of the previously dismissed appeal without realistic fresh evidence. I also take the view that the appeal had no reasonable prospect of succeeding since circumstances have not materially changed in the intervening period. I therefore regard the appellants conduct as unreasonable in the terms of the Guidance.
8. The Guidance also provides that where a party has made a written application for costs, clearly setting out the basis for the claim in advance, their case will be strengthened if the opposing party is unable to or does not offer evidence to counter the case. As already mentioned, the Appellants have not contested the costs application, and the Council's case on costs is therefore strengthened.
9. In concluding on this matter, I attach due weight to the fact that the appellants were represented by agents described as Commissioners & Advocates, who presumably would or should be aware of the Guidance's content.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated. Accordingly, a full award of costs is justified.

Costs Order

11. In exercise of my 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 powers enabling me in that behalf, **I HEREBY ORDER** that Mr & Mrs T Godfrey shall pay to the Forest of Dean District Council the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The Council is now invited to submit to Mr & Mrs T Godfrey, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

G Powys Jones

INSPECTOR