

Costs Decision

Site inspection on 21 October 2023

by John Whalley

Inspector appointed by the Secretary of State

Decision date: **30th October 2024**

**Costs application by Mr Vasilis Kimitri in connection with appeal ref:
APP/D0121/C/23/333527**

69A Bristol Road Lower, Weston-super-Mare BS23 2TW

- The application was 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 was made by Mr Vasilis Kimitri for an award of costs against North Somerset Council.
 - The appeal was made by Mr Vasilis Kimitri against an enforcement notice issued by the Council in respect of the erection of a fence along the boundary of No. 69A.
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Decision

1. The application for an award of costs is not allowed.

Submissions made by Mr Vasilis Kimitri

2. A full application for an award of costs was made. Mr Kimitri said the Council's unreasonable behaviour with regard to the proposed enforcement requirements would achieve a poorer outcome than the settlement he had offered. The whole process could have been avoided had Council officers taken a reasonable view on achieving their desired solution.

Response – North Somerset Council.

3. The Appellant had not demonstrated that the Council acted unreasonably. They explained the difference between a replacement fence and maintenance and repair of a fence, which underpinned the Council's decision to issue an enforcement notice. It was reasonable for the Council not to enter into protracted negotiations regarding the remedy of the breach, when such discussions would lead to an unnecessary perpetuation of the harm to the Conservation Area. The Appellant has not incurred any unreasonable and additional costs in connection with the appeal against the enforcement notice.

Inspector's conclusions

4. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process. Parties in a planning appeal normally meet their own expenses. Costs do not, as a rule, follow the result. However, where a party has – (1) behaved unreasonably and – (2) this has directly caused another party to
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incur unnecessary or wasted expense, they may be subject to an award of costs. However, the power to award costs is limited to those necessarily and reasonably incurred in the appeal process. Expense incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs in any event.

5. Costs applications may relate to events before the appeal or other proceedings was brought, but costs that are unrelated to the appeal or other proceedings are ineligible. - *Para: 032 PPG.*
6. Unreasonable behaviour during the planning application process can be taken into account. But that might only have applied here had the Council's case, had been irrelevant or woeful. It was not. The Council made a properly considered and well reasoned case. They made entirely appropriate submissions in relation to all the grounds of appeal, persuasive in most instances, particularly for instance in relation to the 'adjacent to a highway' argument. However, I found in favour of the Appellant in regard to the lawfulness of the work to repair and upgrade the appeal fence.
7. The application for costs needed to clearly demonstrate how any alleged unreasonable behaviour resulted in unnecessary or wasted expense in relation to the appeal against the enforcement notice. That was not done.

DECISION - COSTS ORDER

8. No order as to costs is made.

John Whalley

INSPECTOR