

Costs Decision

Site visit made on 17 February 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 25th February 2025

Costs application by Mr Richard O'Flynn

Appeal refs: APP/T3725/X/23/3339528; APP/T3725/X/23/3343915

Glenthorne, Five Ways Road, Hatton, Shrewley, Warwick CV35 7HZ

- 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 Richard O'Flynn for an award of costs against Warwick District Council.
- The appeal was made under section 195 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991 against 2 refusals by Warwick District Council grant a certificate of lawful use or development.

Decision: The application for an award of costs is not allowed.

Submissions made by Mr Richard O'Flynn

1. Mr O'Flynn said he sought an award of costs against the Council because of their refusal of his application for a Certificate of Lawfulness W/23/1648 was not a "normal" honest exercise of planning judgement. It was deliberately unlawful in that they refused it on the basis that he had failed to demonstrate "on the balance of probabilities" something which they themselves had already determined to be a matter of fact and which the legal principal of res judicata provides that they cannot resile from in the absence of a material change of circumstances or that determination having been re-adjudicated and revoked by a competent authority with appellant jurisdiction (PINS) - which had not happened.

Response made by Warwick District Council

2. The appellant's grounds for the cost claim were that the Council's refusal of application W/23/1648 "was not a 'normal' honest exercise of planning judgement" and that the decision was deliberately unlawful. That was refuted. The delegated officer report for application W/23/1648 detailed the reasons for the refusal of the Lawful Development Certificate, which was made having full regard to s.191 of the Town and Country Planning Act 1990 and relevant Planning Practice Guidance.

Inspector's conclusions

3. 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 planning appeals 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 incur unnecessary or wasted expense, they may be subject to an award of costs.
 4. 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.
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5. Costs applications may relate to events before the appeal or other proceeding was brought, but costs unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining permission - *Para: 032 Reference ID: 16-032-20140306 Planning Practice Guidance: Appeals (PPG)*.
6. Where an applicant has a complaint against a local planning authority's handling of an application under the planning acts, they have the remedy of exercising their statutory right of appeal against a refusal or failure to determine, and can apply for an award of costs as part of the appeal statutory process.
7. Unreasonable behaviour during the planning application process can be taken into account, but that might only have applied here had the Council's justification for the 2 refusals to issue a certificate of lawfulness been hopelessly inadequate or unjustified. The Council's reasons in support of their refusals were pertinent, properly considered and ultimately persuasive.
8. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against the Council is not justified.

COSTS ORDER

9. No order as to costs is made.


INSPECTOR