
Costs Decision

Site visit made on 19 September 2016

by K R Saward Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 September 2016

Costs application in relation to Appeal Ref: APP/W2465/C/16/3145652 188 Kitchener Road, Leicester LE5 4FQ

- 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 Mrs Y Patel for a full award of costs against Leicester City Council.
 - The appeal was against an enforcement notice alleging without planning permission the erection of a single storey extension including a canopy and pillars situated at the front of the property.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the *Appeals* section of 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.
 3. The appellant seeks a substantive award of costs on the basis that the development enforced against benefits from planning permission. The appellant relies upon a planning permission granted in 2013 for development including a canopy. That application had been retrospective and sought to regularise other development at No 188 not built in accordance with the approved plans together with the canopy structure built without planning permission.
 4. The canopy that was built measured 1.7m in depth, had pillars at each end and an enclosed porch. The canopy that was approved by the 2013 was 1.4m. Whilst the appellant has now reduced the depth of the canopy and removed the pillars, those works had not been done when the notice was issued. The appellant considers that the Council acted prematurely given that there was a 3 year time limit in which to commence the approved development without an end date.
 5. However, as the Council notes, the appellant was not compelled to implement the 2013 planning permission or to complete the works. If it had waited to see if the canopy was going to be reduced and pillars removed in compliance with the approved plans then the structure as then built could have become immune from enforcement action through the passage of time. Having planning permission for a canopy did not mean that unauthorised development could remain until such time as it was lawfully replaced.
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6. Some months before the notice, the Council issued a planning contravention notice to draw attention to the fact that the development was unauthorised as built. The commencement of enforcement action should not therefore have come as a surprise.
7. Notwithstanding the 2013 planning permission, what had been built was a different development from that subsequently approved. Even with the reduced canopy and pillars removed, it is not the same development as that approved because of the 'porch' which forms part of the extension.
8. It strikes me as odd that in applying for retrospective planning permission the appellant did not include the 'porch' within the application. This lends some credence to the appellant's stance that advice was received from the Council that this part amounted to permitted development. As set out in my main decision, it could not be permitted development when it formed part of a wider development. Nevertheless, there is no firm evidence of misadvice. In any event, even if express permission had been granted for the whole development including the 'porch', the fact remains that it had been built in breach of planning control. As such it was liable to be enforced against. Rather than bullying behaviour, the Council was justified in issuing the notice.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

KR Seward

INSPECTOR