

Costs Decisions

Site visit made on 30 September 2016

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

Decision date: 12 October 2016

Costs application in relation to Appeal Ref: APP/D3315/C/16/3148394 Jarveys Cottage, 16 Stoke Road, North Curry, Taunton TA3 6LR

- 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 Mr David Skilton for a full award of costs against Taunton Deane Borough Council.
 - The appeal was against an enforcement notice alleging, in short, the demolition of an existing stone boundary wall and the erection of a new stone boundary wall.
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Costs application in relation to Appeal Ref: APP/D3315/W/16/3146461 Jarveys Cottage, 16 Stoke Road, North Curry, Taunton TA3 6LR

- 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 Mr David Skilton for a full award of costs against Taunton Deane Borough Council.
 - The appeal was against the refusal planning permission for demolition of an existing stone boundary wall and the erection of a new stone boundary wall.
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Decisions

1. The applications for an award of costs are refused.

Reasons

2. Planning Practice Guidance advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 3. When a local planning authority has refused planning permission for development that has already been carried out, the next logical step is often to issue an enforcement notice that seeks to remedy the breach of planning control if it is considered expedient to do so. Waiting for the outcome of the S78 appeal before taking such action runs the risk that if the appeal is dismissed the Council then has to issue the enforcement notice with the potential that gives for another appeal. In the meantime, the unauthorised development remains in place which can undermine public confidence about the effectiveness of enforcing planning control. Against this background, in my experience it is not unusual or unreasonable for a Council to issue an enforcement notice soon after the refusal of planning permission so that the planning and the enforcement notice appeals (the S78 and the S174 appeals)
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can be linked as happened in this case. This saves work, time and expense on both sides. I therefore find that the Council was not premature in issuing the enforcement notice when it did and there was nothing unreasonable about the Council's actions in this respect.

4. Turning to the planning merits of the appeals, although the planning application was recommended for approval the Council's reason for refusal and the reasons for issuing the enforcement notice were clearly referenced to relevant development plan policy. Also, there were differences, albeit subtle, between the former wall and the new wall which I have had to consider such as the slightly different position and whether it is a stark feature. Furthermore, the issue of the impact of the development on the character and appearance of the designated Conservation Area, and the statutory test this engages, is a subjective judgement. While I acknowledge that the Council's case was not the strongest given the Conservation and Landscape officer views at the application stage, it does not mean to say that it was without any substance. It was, on balance, on the side of respectability. As such, I can also see that the Council considered it was expedient to take enforcement action.

Conclusion

5. In view of the above and having had regard to all other matters raised, it is concluded that the Council did not behave unreasonably in either appeal. Accordingly, an award of costs is not justified and so both applications should be refused.

Gareth Symons

INSPECTOR