
Costs Decision

Site visit made on 10 October 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 27 October 2016

Costs application in relation to Appeal Ref: APP/D3640/C/16/3153635 Willowood, School Road, Windlesham GU20 6PA

- 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 Elizabeth Bardoe for a full award of costs against Surrey Heath Borough Council.
 - The appeal was against an enforcement notice alleging the erection of a 2-storey, four bay garage building.
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Decision

1. The application by Mrs Elizabeth Bardoe for a full award of costs is refused.

Procedural matter

2. The *National Planning Practice Guidance* 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.

Summary of submissions by Mrs Elizabeth Bardoe

3. The applicant was given insufficient opportunity to resolve the alleged breach of planning control because there was only one week between the advice that the Council was intending to issue a notice and the issuing of that Enforcement Notice. It did not co-operate with the applicant and in particular did not consider the compromise suggested by the applicant in the letter dated 14 June 2016. This behaviour is contrary to the Council's own Enforcement Plan.
4. The Council did not investigate whether the outbuilding was often used either in association with commercial activity or for residential occupation. Consequently, it issued the notice on a false assumption that there was a harmful intensification of use leading to an urbanising effect.
5. In addition the Council misinterpreted the *Permitted Development Technical Guidance* (PDTG) and thus was unreasonable in its interpretation of the terms 'single-storey', 'raised platform' and the measurement of height for the purposes of the GPDO¹. It also failed to recognise the effect of the fallback position and the impact of the modified building and the likelihood that the

¹ The Town and Country Planning (General Permitted Development) Order 2015

appellant would erect alternative structures within the curtilage to provide the accommodation she needs for guests and the home business.

6. The Council's appeal submissions were vague and generalised and unsupported by objective analysis about the effect on the Green Belt.

Summary of submissions by Surrey Heath Borough Council

7. An email sent to the applicant on 14 January 2015 advised that the garage block required planning permission due its height, the raised platform and the residential use. A follow up letter sent on 1 September 2015 repeated the Council's view that the garage block needed planning permission and requested that an application should be submitted and the matter should be addressed to avoid further action. The applicant has relied on certain extracts within the *Local Enforcement Plan* but this document needs to be read in its entirety and in the light of the facts of the case including the timeframe and an assessment of whether the breach is capable of being remedied through negotiation. The compromise proposed in the letter dated 14 June 2016 did not address all the issues and in particular the height of the building.
8. Irrespective of the level of business or residential use the building exceeds the criteria in the GPDO and thus the reasons for issuing the notice were well founded particularly as the Council's single main concern is the size of the building and the ensuing harm to the Green Belt.
9. The Council's position in respect of the use not being incidental to the enjoyment of the dwelling and why the building does not comply with the GPDO and the PDTG are well rehearsed in its statement.
10. The Council had regard to the fall-back position as is evidenced by the requirements that did not require the demolition of the entire building. Rather, the notice requires compliance to what could otherwise be done under permitted development and thus the response has been entirely proportionate. Formal action was warranted for the reasons set out in the statement as the breach was not minor and caused harm to the Green Belt.

Reasons

11. I shall consider the applicant's main points in turn. Firstly, the evidence shows that the enforcement investigation had been ongoing for at least 17 months before the Enforcement Notice was issued in June 2016. As early as January 2015 the applicant was notified in writing, following what appears to have been an on-site meeting, that the garage block and residential accommodation required planning permission. At that time the applicant was made aware that she had an option to put in a planning application and to advise the Council what steps she intended to take.
12. In September 2015 the applicant sought planning advice from Mr Leigh, a Chartered Town Planner, and there is evidence of an email exchange with the Council. Clear advice, consistent with that in the January 2015 letter, summarised why the Council had concluded that there was a breach of planning control. On 3 December 2015 Mr Leigh was advised that the Council would proceed with formal enforcement action. Mr Leigh disagreed, in a letter dated 7 December 2015 that the outbuilding needed planning permission. It is not clear if the Council responded to this letter although it says in its statement that an email was sent to Mr Leigh on the 10 December 2015.

13. Another site visit took place on 17 May 2016 but the Council confirmed again its view that the outbuilding was not development permitted by the GPDO. The applicant was invited to respond by 27 May 2016 and, following a request for more time made on 19 May 2016 the notice was issued on 7 June 2016. In the interim the Council did not receive any further communication from the applicant or her agent.
14. Given the protracted timescale and the consistent advice by the Council it seems to me that they followed their adopted enforcement protocol. In view of the lack of any progress towards resolving the alleged breach, or in the alternative the submission of a planning application, the actions of the Council were both reasonable and proportionate. The applicant had professional advice and in these circumstances should have been able to reply promptly to the final letter prior to the issuing of the notice.
15. In respect of the suggested compromise of 14 June 2016, this offer was made after the issue of the enforcement notice and the Council responded on 21 June 2016 welcoming the suggested way forward. But because the 'compromise' did not address its primary concern the Council did not consider it expedient to withdraw the notice. That is not unreasonable behaviour.
16. In response to the second point there is no evidence that the main or sole reason for issuing the notice was because of the use of the upper level of accommodation. The pre-appeal correspondence and investigation and the Council's statement say that it was its view that the building itself exceeded in the limitations of the relevant part of the GPDO and thus needed planning permission.
17. Thirdly, for the reasons I have given, I find the applicant's interpretation of the GPDO lacks cogency. In particular her description of the building, which has two distinct and separate levels of accommodation, as a single storey building lacks credibility. The 'fall-back' position is addressed in the Council's statement and also in the drafting of the requirements of the notice.
18. Finally, the Council addresses the effect on the Green Belt in Section 5 of its statement and applies the appropriate tests and case law.

Conclusion

19. Taking these points altogether, although I acknowledge there may have been some delays in the Council's response and also the distress experienced by the applicant, I find there is no substance in the application for a full costs award. Consequently I conclude that the Council has not behaved unreasonably, nor has its action resulted in unnecessary or wasted expense. Consequently the application is refused.

Sukie Tamplin

INSPECTOR