
Costs Decision

Site visit made on 15 November 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 15 December 2016

Costs application in relation to Appeal APP/T1410/C/16/3149447 23-25 Royal Parade, Eastbourne, East Sussex BN22 7AN

- 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 Ms Heidi Louise Cowderoy for a full award of costs against Eastbourne Borough Council.
 - The appeal was against an enforcement notice alleging: 'Without planning permission the replacement of timber framed sash windows ... with UPVC framed windows and doors; and the replacement of the glazed timber framed conservatory on the front elevation of the building with UPVC framed windows'.
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Formal Decision

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

The Application

2. The Applicant seeks a full award of costs in relation to the Council's perceived unreasonable behaviour in issuing an enforcement notice and defending that decision on appeal. In determining the application I have taken into account all the representations received from both main parties. It has not been made with reference to the DCLG's Planning Practice Guidance (PPG) which, amongst other things, deals with the award of costs at appeal. Nonetheless, I have had regard to the relevant advice in the PPG in determining it.

Reasoning

3. The PPG 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 or wasted expense in the appeal process. The Applicant's case for an award is founded on the perception that she has been targeted unfairly by the Council. In her view, other properties in the Town Centre & Seafront Conservation Area have received planning permission for works similar to those she has undertaken at the appeal property or, alternatively, have carried out such works unlawfully without any repercussions.
 4. I am mindful that, pursuant to paragraph 049 of the relevant section of the PPG, not determining similar cases in a consistent manner can give rise to a substantive award against a local planning authority. Nonetheless, whether a case is 'similar' is a matter of fact and degree and will depend on the precise circumstances associated with each particular project. Ultimately, each scheme falls to be determined primarily on its merits and, this being so,
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only where the relevant material considerations are so closely duplicated as to set a precedent will consistency become an issue.

5. The Applicant has drawn attention to two appeal decisions relating to properties in South Cliff where Inspectors have granted planning permission for the use of UPVC fenestration in the conservation area. However, I have explained in my decision on the current appeal why these are readily distinguishable from the works carried out at 23-25 Royal Parade and need not repeat my reasoning here. Beyond this, the Applicant has not provided sufficient details of any specific examples of seafront properties where actions similar to her own undertaken in similar circumstances have either been endorsed or ignored¹.
6. In the absence of cogent evidence to support Ms Cowderoy's assertions, I have no sound basis for concluding that the Council has acted inconsistently in its approach to alterations of this kind. Moreover, so far as the appeal scheme is concerned the Council has properly substantiated its stance with reference to national policy and the development plan and I have agreed that the decision to take enforcement action was the correct approach.

Conclusion

7. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated by the costs application.

Alan Woolnough

INSPECTOR

¹ The Applicant has also made reference to planning permissions granted for UPVC windows at Ayra Court and the Langham Hotel. However, although both addresses are listed in the Council's 'survey of relevant seafront properties', details of the decisions or schemes in question have not been supplied.
