

Costs Decision

Site visit made on 14 December 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 11 January 2017

Costs application in relation to Appeal Ref: APP/D2510/C/16/3149275 St. Helens Cottage, Church Road, Stickford, Boston PE22 8EP

- 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 Peter Ellerby for a full award of costs against East Lindsay District Council.
 - The appeal was against an enforcement notice alleging without planning permission the erection of a building.
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Decision

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

Submissions of the Applicant

2. The Council's statement referred to case law and an appeal decision that had informed the decision to issue the Notice. The officer's notes of the site visit referred to an appeal decision that supported its position in the appeal. Despite being asked at the site meeting for a copy of, or reference number for the appeal and related case law, the officers refused, saying (which was also confirmed in writing) that the information was in the public domain and so the appellant could find it himself.
3. The Council was seeking to hold back on its case with some sort of "trump card" that would only be disclosed if an appeal was made. This placed the applicant in the position of having to make an appeal in order to defend his position. Full and early disclosure of the case law/appeal decisions would have enabled the applicant to consider the evidence and decide whether to accept the Council's position, thereby avoiding the expense of an appeal.
4. The Council's actions amount to unreasonable behaviour contrary to requirements for openness and dialogue set out in National Planning Practice Guidance (nPPG) which expects that there should be cooperation between parties in enforcement proceedings. Consequently unnecessary or wasted expense was incurred in making the appeal.

Submissions of the Council

5. Initially the specific details of such case law were not provided at that time as this information was not readily to hand and there was no intention to "catch out" the applicant at a later date.
 6. The Council does not routinely provide the public with copies of documents in the public domain as they are obtainable directly by the person making that
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request. It was reasonable to have advised the applicant that in the event of an appeal, the requested documents would be used to defend the Council's position.

7. The applicant supplied details of previous appeal decisions that were discussed when the parties met again after the site visit meeting. The Council then replied to the applicant addressing his concerns. However planning permission was still required for the car port. As such, this has not caused the appellant to incur unnecessary or wasted expense in the appeal process.

Reasons

8. nPPG 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. For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
9. Having read the detailed notes of meetings and correspondence between the Council and the applicant and his agent, I am of the view that on the whole the Council officers dealt with the applicant conscientiously and fairly despite being pressed hard to change their mind as to the planning status of the car port.
10. I understand what the Council say about information in the public domain, but it was less than helpful not to have supplied the relevant appeal decision in full to the applicant when it was available. That said, the relevant points were communicated to the applicant and his agent. I am satisfied from all that I have read that it is unlikely that full disclosure at an earlier stage would have prevented the appeal. The applicant lodged the appeal as was his right and the Council defended its decision in accordance with the appeal procedure.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in nPPG, has not been demonstrated.

Grahame Kean

INSPECTOR