
Costs Decision

Inquiry held on 4 January and 3 February 2017

Site visit made on 5 January 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 02 March 2017

Costs application in relation to Appeal Ref: APP/M1710/C/16/3148814 Janeland, Willis Lane, Four Marks, Alton GU34 5AP

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms Shelley Ray for a full award of costs against East Hampshire District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the erection of a building.
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Decision

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

The submissions for Ms Ray

2. The appellant has put her case on the costs application in writing¹ and I will not therefore repeat it in full here. However, in commenting on the Council's response, the appellant submits that the enforcement action was predicated on the assumption that a new building had been erected. The Officer's report that recommended the service of the notice stated that it was clear from photographs that there was a new building; this was incorrect. There might have been a breach of planning control but not a new building.
3. Even if the building is new, the Council cannot enforce against the walls and floor and no proper assessment of these matters was carried out which lead to an incorrect notice and requirements. If the notice is quashed, there is a clear justification for an award for costs and if it is amended there is no evidence that it was expedient to issue it. This would have been evident had the investigations had been carried out correctly.

The response by East Hampshire District Council

4. There appears to be an assertion that there has been no breach of planning control and that if a Planning Contravention Notice (PCN) had been issued that would have been obvious. Planning permission would be needed for a new building and the building on the site looks new. Therefore the issue of the notice was inherently reasonable.

¹ Inquiry Document 8

5. The building conflicts with policies CP2, CP10, CP19 and CP29 of the East Hampshire District Local Plan: Joint Core Strategy 2014 for all the reasons set out in the Council's closing submissions². The building will continue to cause harm and more frequent site visits and a walk around inside the building would have made no difference as everything noted above would have been manifest.
6. The same applies to the issue of a PCN; everything was obvious to the naked eye. There is no merit in the costs application, it is plainly unreasonable conduct in itself designed to hide the fact that the case is hopeless.
7. With respect to the alleged change of position, the photographs from April 2012 show that what has been erected is a new building. It was proper to take the view that it should be enforced against before 4 years have passed.

Reasons

8. The Government's Planning Practice Guidance (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.
9. I have found that the enforcement notice was incorrect to cite the erection of a building but this was a conclusion reached after I had heard detailed evidence, given under oath, on the chronology and extent of the works from those involved in undertaking them and the appellant's husband.
10. The barn in question is very different from how it appeared before the works were carried out; it now looks like a bungalow, possibly still in the course of construction, with leaded light windows and glazed patio-style doors. There is no dispute that the erection of the external walls was unauthorised when the work was carried out, because they have materially changed the appearance of the building. Nevertheless, I have found that the works to the main roof were carried out as authorised works of maintenance.
11. However, the Council did not take enforcement action until 16 March 2016, just after the 4 year time limit for enforcement action against the walls had passed in early March. The roof was not completed until late May/early June 2012 and action against any breach of planning control in respect of it could therefore still be taken when the notice was issued. Given the dramatic change in appearance that the works as a whole have brought about and the closeness of the time limit, I do not find it unreasonable that the Council took enforcement action.
12. I am also not persuaded that further site visits or the issue of a PCN would necessarily have provided enough information to have avoided the issue of the enforcement notice. It is true that, had the building been viewed internally after the new walls were built, it might have been clear that the original walls had been retained but this would not have affected the status of the new walls, which remained unauthorised until early March 2016. All that could be said is that it might possibly have been concluded that the works did not constitute the erection of a building as alleged. I have no doubt that, even if a site visit had been undertaken, an enforcement notice would still have been issued, albeit possible couched in different terms. Had this happened prior to March 2016, any appeal on ground (d) against the notice could not have succeeded.

² Inquiry document 10

13. The Council have put forward detailed and well-reasoned arguments to support their case and, as noted above, the facts that have caused me to allow the appeal have only emerged through the appeal process. This includes the evidence, given under oath and tested through cross-examination, which has established how and when the works to the building were carried out. Whilst responses to a PCN could have given a better idea of what had happened, they would not carry the same weight as the oral evidence presented at the Inquiry.
14. It is clear from the correspondence between the Council and the appellant's agent that individual planning officers took differing views on the status of the works. However, the date of the completion of the walls is crucial and while the Council took too long to issue the notice, there is no doubt that a breach of planning control had occurred. Further investigation at an earlier stage would not have changed this position.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and the application for an award of costs is refused.

Katie Peerless

Inspector