
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 East Hampshire District Council for a partial award of costs against Ms Shelley Ray.
 - 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 East Hampshire District Council

2. The Council has put its case on the costs application in writing¹ and I will not therefore repeat it in full here. However, additional points raised at the Inquiry confirmed that no costs are being sought in respect of the appeal on ground (a) as this can be argued on policy matters. However the appellant's case on the other grounds is claimed to be hopeless and it is submitted that ground (b) or ground (c) could be argued but not both.
3. In commenting on the appellant's response, the Council submits that the application is justified because, while costs applications can be avoided when both sides behave reasonably, this is not the case here.
4. The principle from the 3 cases cited by the Council² provide guidelines on when a new building has been created and, whilst not binding they are nevertheless helpful. *Street* found that the works were not an improvement, *Larkin* found the works were capable of being a new building and *Hewlett* established that work carried out in stages does not avoid it being a new building.
5. However, one does not need the findings of these authorities to conclude that there is a new building; that is common sense and it does not require a set of planning rules to establish this. All that needs to be considered is the clear differences in the building that have taken place between 2011 and the present.

¹ Inquiry Document 7

² Inquiry document 6

The response for Ms Ray

6. The Council suggests there is no basis for ground (b) because of the 3 cases cited. These are substantially different from the appeal case and no boundaries set by them have been breached. The Council believes that although a substantial proportion of the building remains, it can enforce against everything. This is a unique case that is now being advanced; the concept that the appellant should be barred from raising her case is strange. The Council cannot point to any case law or statute to explain why it can enforce against the whole building.
7. Grounds (b) and (c) are not mutually exclusive. Ground (c) is predicated on amendments to the enforcement notice being carried out following the appeal on ground (b). That scenario has been covered and put forward as a clear possibility. The Council's case is based on the acceptance of its approach to enforcement, as put forward, being reasonable, which it is not.
8. The Council has failed to substantiate any harm caused by the breach and this is a misconceived application that should be disregarded.

Reasons

9. 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.
10. I have allowed the appeal on the various grounds, for the reasons set out in the main Decision and do not, therefore, agree that the appellant has behaved unreasonably by bringing the appeal and pursuing the arguments put forward on her behalf. During the course of the appeal I have been given no other examples of unreasonable behaviour by the appellant to which the Council objects.
11. 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 a partial award of costs is refused.

Katie Peerless

Inspector