
Costs Decision

Site visit made on 1 March 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: 21 March 2017

Costs application in relation to Appeal Ref: APP/J1915/C/16/3154375 24 Cublands, Hertford, Hertfordshire SG13 7TS

- The application is made under the Town and Country Planning Act 1990, section 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Joanne Ruskin for an award of costs against East Hertfordshire District Council.
 - The appeal was made against an enforcement notice alleging: without planning permission the construction of a dormer window on the front roof slope fronting the highway.
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Decision

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

Submissions of the Applicant

2. The application is for a full award of costs.
3. The Council acted unreasonably in presenting no evidence of highway status which was a key issue. Without such evidence the enforcement notice should not have been issued. The applicant was left guessing at how the Council was to put its case and expense was incurred in anticipating its case and attempting to respond to it when it should have been clear from the outset. The applicant has had to anticipate which of the three potential "candidate highways" were relevant to the issue of whether the principal elevation of her dwellinghouse fronted one or more of them for the purposes of the GPDO, and make her case on each scenario in the appeal.
4. As a result the applicant has incurred unnecessary or wasted expense in the appeal process.

Submissions of the Council

5. The Council's case was clearly set out in its appeal statement and since the breach was reported it consistently advised the applicant that the dormer window fronted a highway. The determining factors relevant to the case were set out in the officer's report. It denies offering no evidence of highway status, stating that there was just a difference of opinion between the parties as to what constitutes a highway and whether the dormer fronts a highway. Consequently the Council did not behave unreasonably.

Reasons

6. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly
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caused another party to incur unnecessary or wasted expense in the appeal process.¹ 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.²

7. The Council had put forward arguments relating to other “candidate” highways and I recognise that it did not investigate the status of each route as thoroughly as did the appellant. However it is for appellants to decide how to present their case and it would be unreasonable to have restricted the Council as to the number of possibly relevant highways.
8. The view that the Council came to regarding Vixen Drive, namely that it was a highway and that the principal elevation of the appeal property fronted that highway for the purposes of the permitted development legislation, was a conclusion that was arrived at before the notice was issued and only after giving the applicant time to reflect whether a planning application should be submitted. It was moreover a view that was supported in the Appeal Decision.
9. Although highway status was clearly relevant, I was satisfied on the balance of probabilities that Vixen Drive was a highway for the purposes of applying the relevant legislation and guidance in the appeal, based on my experience of walking the route and all that I had seen and read. It is also apparent from the way the appellants put their case that even if the Council had earlier identified Vixen Drive as relevant, it would not have prevented the appeal being made.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Grahame Kean

INSPECTOR

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Paragraph: 048 Reference ID: 16-048-20140306