
Costs Decision

Site visit made on 2 March 2017

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: 12 April 2017

Costs application in relation to Appeals Ref: APP/J1915/C/16/3157342 and 3157343

The Cottage, Green End, Dane End, Ware, Hertfordshire SG12 0NY

- 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 Mr Craig Stevens and Mrs Joanna Stevens for an award of costs against East Hertfordshire District Council.
 - The appeals were made against an enforcement notice alleging the erection of an unauthorised two storey rear extension.
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Decision

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

Submissions of the Applicants

2. The application is for a full award of costs.
3. The Council acted unreasonably in serving the applicants with a copy of the enforcement notice without offering the opportunity to apply for planning permission to retain the "as built" extension.
4. The applicants also offered to engage with the Council by considering how the property could be altered to allow retention of the rear extension with no net gain to volume on the site, or to comply with the permitted development legislation but the Council declined to engage with any such options.
5. As a result the applicant has suffered undue stress and expense in the appeal process which could have been avoided.

Submissions of the Council

6. The Council's practice is not to invite applications to retain development where, as was considered in this case, there is unlikely to be a favourable outcome. An application could always have been submitted in which case a fee would still have been payable by the applicants.
 7. No options were presented to the Council for alterations to the property. The applicants at any time could have altered the extension so as to comply with the permitted development legislation but it is not open to Council by way of an enforcement notice to direct an extension be built to a given specification.
 8. Weight was given to the possibility that a rear extension could be built in this location but the Council acted properly in considering the degree of harm caused by the development. Consequently the Council behaved reasonably.
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Reasons

9. Circular 3/2009 has been replaced by advice contained in the Planning Practice Guidance (PPG). It advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly 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
10. In the Appeal Decision I found that the differences between what might be permitted development and the unauthorised extension were not minimal or insignificant as claimed. The submitted correspondence shows that the Council did engage with the applicants and clarified that it was open to them to submit plans for an amended scheme to determine its acceptability. However no clearly articulated alternative development was submitted or agreed upon that would have prevented the appeal being made.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Grahame Kean

INSPECTOR

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

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