
Costs Decision

Site visit made on 10 July 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 17 July 2017

Costs applications in relation to Appeals A & B Ref:

APP/N1160/C/16/3164102 & 3164103

207 Ridgway, Plympton, Plymouth PL7 2HP

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The first application, A, is made by Mrs Dawn Perrins and Mr Steven Perrins for a full award of costs against Plymouth City Council. The second application, B, is made by Plymouth City Council for a full award of costs against Mrs Dawn Perrins and Mr Steven Perrins.
 - The appeal was against an enforcement notice that alleged: Removal of a 4.1 metre length of front boundary wall, and the creation of a front garden hard surface, to facilitate the formation of an off street vehicle parking area with access off a classified highway [as corrected in my main decision].
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Application A: Decision

1. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, IT IS HEREBY ORDERED that Plymouth City Council shall pay to Mrs Dawn Perrins and Mr Steven Perrins the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned appeals more particularly described in the heading of this decision.
2. The Applicant is now invited to submit to Plymouth City Council, to whom a copy of this decision has been sent, the details of those costs with a view to reaching agreement as to the amount.

Application B: Decision

3. I refuse the application for an award of costs.

The case for both parties and the approach to an application for costs

4. The case for both parties is set out in writing and hence, since there is a public record of those submissions, I do not propose to rehearse them here. I propose to deal with each application for costs in turn. The Planning Practice Guidance [the Guidance] 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.

Application A: Reasons

5. The basis of the application for costs made by Mr & Mrs Perrins appears to be that, following the refusal of the planning application, they have consulted the Council about what works, short of what they originally proposed, they were

able to do without breaching planning control. They have then proceeded to do what the Council said that they could do, only to find that it is alleged that they have breached planning control.

6. As I have noted in what I hope is a fair summary of the exchange between the parties in my main decision, the Council confirmed in writing on more than one occasion that the wall could be removed and the ground levels altered without causing a breach of planning control. The Council were told, in the email dated 29 August 2014, that a hard surface was proposed. If the Council were in any doubt as to whether what was proposed then, or any stage prior to the works commencing in January 2016, would be lawful it could have invited an application for a Lawful Development Certificate [LDC]. So whilst the Council's reply did not expressly address the hard surface, a fair reading of the Council's statement, notably paragraph 4.2.1 thereof, suggests that individually the works, including the hard surface, could be considered permitted development.
7. The Council appears to have concluded that the works comprised a breach of planning control because, taken together, they involved the formation of a means of access to a classified road. However, noting the ground (b) is dealt with in a single sentence in paragraph 4.1.1 of the Council's statement, the issue is not whether works have taken place but whether those works involved the formation of a means of access to a classified road. Given the Appellants' consistent indication that the works were required to address a drainage issue I conclude that it was unreasonable for the Council to find otherwise. Amongst other things my main decision records that it provides no evidence of the front garden having been used as a vehicular access or for the parking of vehicles.
8. Whilst I acknowledge the terms of the refused planning application it was clear from the subsequent exchange of correspondence that was not what was done. If the Council had undertaken a site visit it should have noted that the kerbs had not been lowered and, if not, this fact should have been obvious from the response to the Planning Contravention Notice [PCN]. Although there is no reason to think that it was inappropriate to issue a PCN¹, the response to the PCN was entirely consistent with the earlier exchange of emails. I have given a reason in my main decision for attaching the reply to the PCN significant weight and that basic rationale should equally have been evident to the Council. In the face of this cumulative evidence the Council's action in issuing an enforcement notice was not based on clear evidence of a breach; it does not appear to have taken proper account of, or given sufficient weight to, the reply to the PCN.
9. The Guidance says: *"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. I believe this to be a case in point. The Council has provided no evidence to substantiate its assertion that the works involved the formation of a means of access to a classified road. In the face of everything that Mr & Mrs Perrins told them after 29 August 2014, it alleged that the works comprised the formation of a means of access to a classified road, despite having no evidence to support the contention. It was unreasonable to conclude that the purpose of the works was to form an access. What might happen in the future does not support a claim that there has been

¹ The legal test in section 171C of the Town and Country Planning Act 1990 is merely that it should appear to the Local Planning Authority that there "may" have been a breach of planning control.

² See paragraph 048; Reference ID: 16-048-20140306.

a breach of planning control. Since the Council had no reasonable basis for alleging that the operations actually comprised a breach of planning control, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, including the cost of seeking legal advice, has been demonstrated.

Application B: Reasons

10. Having identified what it considered to be a potential breach of planning control, the Council sought to negotiate a solution. Whilst the Council has not provided a copy of its published enforcement policy, it is generally regarded to be good practice to negotiate a solution to a suspected breach of planning control. However in this case a negotiated solution was not achieved and so the Council, having given due warning, resorted to enforcement action.
11. It does not however follow in my view that Mr & Mrs Perrins were unreasonable in refusing to comply with the Council's suggested solution. Amongst other things I note that they had taken expert advice from a suitably qualified firm. There was a right of appeal against the enforcement notice and I note that one ground on which such appeals were brought was (f), in pursuit of a claim that the steps were excessive and lesser steps would overcome the objections. This ground goes to this very point and I cannot accept it was unreasonably pled.
12. The Council considered that the development constitutes the formation of a vehicular access, but for reasons set out in my main decision I cannot agree. In the circumstances I cannot accept the basis for the assertions made in the first two sentences under point 2 of the Council's application for costs. Since an access onto a classified road has not been formed the basis upon which the Council says the appeals are unlikely to succeed has not been clearly made out. I acknowledge that some other components of the development have taken place, but the exchange of emails, for example in respect of the removal of the wall, provide a basis for the reasonable pursuit of these appeals, for example on ground (c). Having regard to the findings of my main decision, it was not unreasonable to lodge and pursue the grounds of appeal that were brought.
13. I recognise that enforcement is a discretionary activity and I do not doubt that dealing with this matter has caused the Council to incur costs, at the very least in terms of Officer time. However the Guidance is clear that costs may only be awarded where: i) a party has behaved unreasonably; and ii) the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process [*my emphasis*]³. Since there is no basis to find unreasonable behaviour it must follow that the application should not succeed.
14. For the reasons identified above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

Pete Drew
INSPECTOR

³ See paragraph 030; Reference ID: 16-030-20140306.