

Costs Decision

Site visit made on 26 April 2018

by Sandra Prail M.B.A., LL.B (Hons), Solicitor (non practising)

an Inspector appointed by the Secretary of State

Decision date: 15 May 2018

**Costs application in relation to Appeal Ref: APP/X1545/C/17/3181574
Land at 43 Alamein Road, Burnham-On-Crouch, Essex, CMO 8JH.**

- The application is 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 application is made by Maldon District Council for a full award of costs against Mr Dennis Green.
 - The appeal was against an enforcement notice issued by Maldon District Council.
 - The breach of planning control as alleged in the notice is unauthorised cladding of the dwellinghouse on the land and the unauthorised enlargement of the dwellinghouse on the land comprising a hip-to-gable enlargement of the roof, a dormer window to the rear slope of the roof, and a rear single storey extension in breach of conditions A.3(a) and B.2(a) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
-

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of the appeal, 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.
3. The Guidance provides that an Appellant is at risk of an award of costs if the appeal or grounds of appeal had no reasonable prospect of succeeding.
4. The Council claim that the Appellant acted unreasonably in citing arguments relevant to ground (c) and (a) appeals when running a ground (f) appeal. They say they have wasted resources in responding to these irrelevant arguments.
5. The professionally represented Appellant says that he is not substituting other appeal grounds but merely referring to other planning matters to strengthen the case for allowing the ground (f) appeal. He argues that it is reasonable to refer to permitted development rights as the fallback position.
6. In my substantive decision I make clear that the arguments concerning permitted development rights and the planning merits of the development are not relevant to the ground (f) appeal. I consider that the professionally

represented Appellant should have been aware, from at least the time when the Council submitted their representations, that these arguments had no prospect of influencing the determinations to be made under the ground (f) appeal. Running these arguments once he had been put on notice of the Council's legitimate concerns was unreasonable.

7. The Appellant's suggestion that the Council could have encouraged an application for a certificate of lawful use or development in order to enforce the relevant conditions of the GPDO is misplaced. It is open to the Appellant to make such an application but it would be illogical for the Council to encourage this when they have identified a breach of planning control.
8. However, I do not consider that running these arguments outside the remit of a ground (f) appeal caused the Council to incur unnecessary or wasted expenses in this appeal process. The Council's decision to take enforcement action was informed by an assessment of the planning merits of the unauthorised development and consideration of the fallback position concerning permitted development. The Appellant did not raise anything new that required additional work by the Council. Addressing these issues in their written representations did not involve extra expense beyond a few paragraphs of narrative background. Therefore whilst I find the Appellant to have run arguments with no reasonable prospect of success in this case I do not consider that it resulted in unnecessary or wasted expense by the Council.
9. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. I conclude that the award of costs sought by Maldon District Council against Mr Green is not justified. The application should be refused.

S. Prail

INSPECTOR