
Costs Decision

Site visit made on 18 December 2019

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2020

Costs application in relation to Appeal Ref: APP/G2625/C/19/3219894 2 Quebec Road, Norwich, Norfolk NR1 4AU

- 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 Mr Adam Edge and Mr Simon Capp for a full award of costs against Norwich City Council.
 - The appeal was against an enforcement notice alleging without planning permission, the alteration of the flat roofed side extension.
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Decision

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

Reasons

Background

2. 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.
3. The Guidance also sets out that, in respect of enforcement action, local planning authorities must carry out adequate prior investigation and that they are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation.

Findings

4. The applicants refer to the tone of the Council in correspondence with them as being threatening and unreasonable. In particular they regard this as leading to changes to the scheme which detracted from its appearance.
5. Planning permission was granted for extensions and alterations to 2 Quebec Road under the Council's reference 17/00095/F (the 2017 scheme). When the development was carried out the applicants say that the Council requested that it be rebuilt to accord with the approved plans and did not seek to resolve the matter informally. Furthermore, they argue that it was necessary for them to seek advice from a specialist Planning Consultant, before the Council engaged with them.
6. I do not consider that the Council acted unreasonably at this point because the responsibility for carrying out the development in accordance with the approved plans lies with the applicants. Given the circumstances of the case it

is reasonable for the applicants to seek professional advice to help them and there is limited evidence before me to suggest that the Council's response was influenced by the involvement of a planning consultant.

7. The Council have been consistent in their view that the as built development is not acceptable. When application Ref. 18/0114/F (the 2018 scheme) was submitted, the Council recommended changes to the plans and subsequently the amended plans were approved. This shows that the Council were actively seeking to resolve their concerns without resorting to formal enforcement action. The applicants had the choice whether or not to make the amendments which the Council were recommending.
8. It will be seen from the appeal decision that I concur with the view of the Council that the as built scheme is harmful to the Conservation Area and contrary to policies in the Development Plan. It follows that an appeal could not have been avoided by more diligent investigation that would have avoided the need to serve the notice in the first place.
9. The applicants also point towards an inconsistency in advice from the Conservation and Design team, delays and inaccuracies in the Council's assessment of the 2018 scheme and a lack of co-operation by the Council for example in visiting the site and meeting the applicants.
10. In their appeal statement the Council explains that when taken as a whole the response from the Conservation and Design Team (CDT) on the 2017 scheme does not imply either support or objection to the development. This is a robust explanation of any perceived inconsistency between the CDT comments in relation to the 2017 and 2018 schemes.
11. However, there remains a disparity between the CDT comments on the application for the 2018 scheme and what was approved under the 2017 scheme. In this regard the detailed comments give the sense that there were concerns about what had been approved under the 2017 scheme. However, when the 2018 scheme was determined it is clear from comparison between the plans for the 2017 and 2018 schemes and the as built plans that the Council have not sought to renege on the elements of the scheme which had been approved. Moreover, it appears to me that the Council adopted a conciliatory approach as the 2018 scheme is much more akin to the as-built plans than the approved plans for the 2017 scheme.
12. With regard to any delays in the process by which the 2018 scheme was determined, some of which may have arisen in relation to inaccuracies in the assessment; there is very limited information before me to substantiate these arguments. Also, these concerns do not relate specifically to the service of and appeal against the enforcement notice which is the subject of the current appeal.
13. The applicants also state that they were not given fair warning of the enforcement action which has been pursued by the Council and suggest this was not consistent with the time period for commencement specified in the planning permission for the 2018 scheme or the six-month period during which appeal could be made. They also say that the Council served the notice in advance of the three-month timescale they had given for alterations to be made to the development.

14. There is no requirement for the Council to give notice of their intention to serve an enforcement notice or to wait until any planning permission for an alternative scheme has expired. The requirements of the notice do not need to be adhered to until any appeal against the notice has been determined, as is the case here. The Council has consistently advised that the as built scheme is not acceptable and is harmful to the CA. Therefore, notwithstanding the above, the Council has not acted unreasonably in serving the notice.
15. The Council does not dispute that it served the notice in advance of the end of the 3-month period which it gave to the applicants to make changes to the development to accord with the approved plans. The explanation for doing so is that it was clear to the Council that the applicants did not intend to make the changes.
16. Whilst this action was not unreasonable, having given a timescale to the applicants it may have been prudent to adhere to it. On the other hand, it can be seen from the reply to the formal complaint that the Council considered that serving a notice which could be appealed against was part of the process of resolution of the disagreement between the Council and the applicants.
17. The development is clearly visible from the street and I find the Council's explanation of their ability to carry out a site visit without needing to meet the applicants plausible.

Conclusion

18. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated

Sarah Dyer

Inspector