
Costs Decision

Site visit made on 7 January 2020

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Costs application in relation to Appeal Ref: APP/K2230/C/19/3220892 Hartshill Bungalow, Thong Lane, Shorne, Gravesend, Kent DA12 4AD

- 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 Gravesend Borough Council for a full award of costs against Mr Santokh Gill.
 - The appeal was against an enforcement notice alleging the unauthorised construction of a single storey rear and side extension to the property and raised patio to the rear of the property.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary and wasted expense in the appeal process.
3. Paragraph 53 of the PPG states that examples of unreasonable behaviour by an appellant could occur where the appeal follows a recent appeal decision in respect of very similar development on the same site and where circumstances have not materially changed in the intervening period. The applicant's case is that the merits of the ground (a) appeal had already been considered at appeal under reference APP/K2230/D/18/3207317, and it was unreasonable for the appellant to pursue their ground (a) appeal.
4. The appellant states that the appeal on ground (a) was as a result of a different interpretation of paragraph 15 of the Inspector's Decision Letter, which referred to the fallback position achievable using permitted development rights. As there was no certificate of lawfulness before the Inspector in determining that appeal, it is not unreasonable for the appellant to appeal against the Enforcement Notice under ground (a) with the benefit of the certificate of lawfulness for the permitted development scheme, which clarified the fallback position. This represents a material change in circumstances.
5. Paragraph 54 of the PPG advises that appellants are encouraged to withdraw their appeal at the earliest opportunity if there is a good reason to do so. The appeal on ground (c) was withdrawn on 21 November, the appellant states that this was because formal decisions had been made on certificates of lawfulness. The applicant suggests that it was clear that permission was required for the development subject to the Enforcement Notice, but I note that the appellant

also sought a decision with regard to an outbuilding, which was issued on 15 November 2019. There was less than a week between the date of this decision and the applicant's communication to the applicant of their withdrawal of the ground (c) appeal on 21 November. The applicant's deadline for submitting their statement was 29 November 2019, and they were clearly aware that the appellant had withdrawn that ground of appeal as they refer to this in their statement. They nonetheless defended the Enforcement Notice on that ground, as it had not been confirmed by the Planning Inspectorate. I do not find that the appellant delayed unnecessarily in withdrawing the ground (c) appeal and thereby behaved unreasonably.

6. The applicant argues that the appellant was unreasonable in pursuing the ground (f) appeal as both parties had agreed and accepted that lesser steps could be undertaken by virtue of the lawful development certificate granted under 20190013 granted on 7 March 2019. The appellant disagrees that lesser steps had been agreed. In any event, the appellant had the right to pursue the appeal under ground (f), even if other discussions were taking place with the Council regarding alternatives, and I do not agree that this was unreasonable behaviour.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is not justified.

N Thomas

INSPECTOR