



Costs Decision

Site visit made on 6 January 2020

by K R Seward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 January 2020

Costs application in relation to Appeal Ref: APP/D1590/C/19/3226120 64 Canterbury Avenue, Southend-on-Sea SS2 4QL

- 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 Southend-on-Sea Borough Council for a full award of costs against Mr Grant Dennison.
 - The appeal was against an enforcement notice alleging without planning permission the unauthorised development of a two storey side extension, rear dormer and single storey rear extension.
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Decision

1. The application is dismissed.

Reasons

2. Paragraph 030 of the Appeals section of the Planning Practice Guidance (PPG) 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.
3. Unreasonable behaviour in the context of an application for an award of costs may be either: procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.
4. The application by the Council follows an appeal against its decision to issue an enforcement notice against unauthorised extensions of the host dwelling. The gist of the Council's argument is that the appeal on grounds (c), (d), (f) and (g) had no reasonable prospect of success. It is the Council's belief that the only ground that would justify the lodge of the appeal was ground (a).
5. Had ground (a) been pursued it would have given rise to a deemed planning application and the planning merits would have fallen for consideration. As it was, the ground (a) appeal lapsed after non-payment of the relevant fee. The costs application has therefore been made on substantive grounds although procedural arguments are also raised in relation to ground (g).
6. The onus of proof on matters of fact arising under grounds (c) and (d) appeal was on the appellant.
7. The appellant did not explicitly argue that the rear extension was permitted development under ground (c), but it could be inferred from his arguments that the external materials matched the dwellinghouse. Based on the submissions, it was the only conclusion that could be drawn when ground (c) was pleaded.

8. That argument was flawed because the Council was able to produce photographic evidence to demonstrate that the house was red brickwork when prior approval for a single storey extension was secured. It must have been later on that the house was rendered and this appears to be acknowledged in the appellant's response to the costs application. As the extension is not red brickwork it does not comply with a condition of Class A, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 ('the GPDO') to benefit from permitted development.
9. The Council suggests that the appellant perhaps sought to mislead. I can understand why the Council might draw that conclusion from the appellant's statement referring to descriptions of the existing property. However, when the submissions are read in their totality, including the final comments, I do not believe there was intent to mislead. Whilst the arguments were not put well, I understand the appellant to argue basically that the rear extension was built in materials intended to match the render proposed for the main dwelling (and side extension). This raised an issue to be determined over the point in time when the conditions are required to be fulfilled for the purposes of the GPDO. It was not an unreasonable point even if not made well and pursued unsuccessfully.
10. The appellant misunderstood what a ground (d) appeal entails as he argued that part of the extension had been removed. The act of removal did not make it too late for enforcement action. That could only occur if the extension was built more than 4 years before the notice was issued to become immune from enforcement action. The appellant was unrepresented and could not be expected to know what is required to succeed on each ground. The Planning Inspectorate gave the appellant opportunity to address the matter in a letter to him advising that "your facts do not seem to relate to ground (d)." He was invited to confirm the grounds of appeal and provide any additional facts to support each of them. In response, the appellant essentially reiterated that a dormer window had been removed and produced a photograph to prove it.
11. In consequence the appellant failed to advance arguments pertinent to the pleaded ground (d) which was bound to fail. It is bordering upon unreasonable behaviour, but the appellant has explained that he was unable to afford professional advice. As the appellant was unrepresented in the appeal and clearly had difficulty in understanding what each ground entailed, I am inclined to the view that his ground (d) appeal was confused rather than unreasonable. After careful consideration I consider that in the circumstances the conduct falls short of amounting to unreasonable behaviour to warrant an award of costs.
12. On ground (f), the Council argues that no lesser steps were identified by the appellant. Part of the development had been removed already leaving a two storey and single storey extension. Some of the arguments raised in relation to the two-storey extension were based on the planning merits which were irrelevant. Another line of argument suggested that the only issue was with the windows based on the reasons given by the Inspector in a previous appeal. In essence, the argument was along the lines of it being excessive to require removal of the whole extension if the windows are the only problem. This was an argument pertinent to ground (f) albeit misguided on the extent of concerns with the extension.
13. Also, on ground (f) the appellant suggested that planting hedges would resolve

- the issue. This was a lesser step relevant to ground (f) albeit one that was unsuccessful. Ground (f) was not otiose in the absence of a ground (a) appeal when the enforcement notice was seeking to address injury to amenity.
14. Therefore, whilst the arguments under ground (f) were not well made or entirely relevant, there were points which did relate to that ground which were not altogether unreasonable to attempt to pursue.
 15. With regard to ground (g), the Council maintains that no alternative time-frame was put forward and the appellant failed to properly engage with the Council regarding the time for compliance which could have resolved the issue.
 16. When the appeal was first lodged the appellant failed to identify an alternative compliance period to the 6 months given in the enforcement notice. That was corrected soon after when on the prompting of the Planning Inspectorate the appellant requested 12 months to save up enough money for the works. Furthermore, once an enforcement notice is issued, the way for a recipient to secure a longer compliance period is to appeal on ground (g). There is no obligation on an appellant to seek to negotiate an extension of time with the Council. I find no unreasonable behaviour by the appellant exercising his statutory right of appeal.
 17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

KR Seward

INSPECTOR