



Costs Decision

Site visit made on 7 January 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

**Costs application A) in relation to
Appeal Ref: APP/N1160//C/19/3220794
58 Coombe Way, Plymouth PL5 2HB**

- 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 Plymouth City Council for a full award of costs against Mr David Fletcher and Ms Jane Burgess.
 - The appeal was against an enforcement notice alleging the construction of raised deck, screening and store without benefit of planning permission.
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**Costs application B) in relation to
Appeal Ref: APP/N1160//C/19/3220794
58 Coombe Way, Plymouth PL5 2HB**

- 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 David Fletcher and Ms Jane Burgess for a full award of costs against Plymouth City Council.
 - The appeal was against an enforcement notice alleging the construction of raised deck, screening and store without benefit of planning permission.
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Decision A)

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

Decision B)

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

Reasons

3. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice.
4. There is disagreement in this case regarding the degree to which the Council and appellants have co-operated with each other in order to try and find a solution to this case without recourse to enforcement action, as encouraged by the PPG. It is not the role of an inspector to arbitrate in such disputes either in appeal or costs decisions. It can be material in costs decisions to take into

account the reasonableness or otherwise of actions prior to the appeal. However, the PPG is clear that applicants for costs need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense such as in the whole or part of the appeal proceedings. Whether or not the action prior to the appeal was unreasonable by either party, these applications will not succeed if those parties fail to demonstrate the wasted expenses that have allegedly occurred during the appeal process.

5. The PPG confirms that the taking of enforcement action by local planning authorities is discretionary, to be undertaken when they regard it as expedient to do so. It does not automatically follow that where planning applications have been refused and appeals dismissed, that the Council will then also take enforcement action or what form it will take. Enforcement action can have 2 basic alternative purposes as set out in s173(4)(a) to remedy the breach or s173(4)(b) to remedy injury to amenity.
6. In terms of the appellants' actions in this case, the failure previously to secure planning permission for the development and the failure of the negotiation process meant that they could have reasonably expected some form of enforcement action to be taken. It was not incumbent on them however to simply remove the development. They were entitled to wait for a notice to be issued which would then dictate the form of action that the Council considered was expedient.
7. The appellants were also entitled to submit an appeal against that notice. When that happened, the appellants did not pursue the appeal on planning merits which had previously been considered through the appeal process. Their appeals were limited to reasonable grounds in my view. The appellant's have not been professionally represented but made very relevant and arguable points about the form of the enforcement notice and how it was drafted and issued. Although ground (b) had no reasonable prospects of success, the Council's costs application does not indicate to me that this was a specific cause for additional time to be spent on the Council's case.
8. Likewise, given the background and break-down in negotiations, the Council did not act unreasonably in issuing an enforcement notice. They had a duty to consider the expediency of taking enforcement action, taking into account the living conditions of the properties adjoining the appeal site.

Conclusions

9. Whether or not either party has acted unreasonably in the events that lead to the issuing of the enforcement notice and then the submission of the appeals, neither has demonstrated that wasted expense during the appeal process has resulted. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated with respect to either of the costs applications.

A Harwood

INSPECTOR