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## Costs Decision

Site visit made on 17 February 2020

**by K R Saward Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 March 2020**

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### **Costs application in relation to Appeal Ref: APP/X1545/C/19/3236633 2 Woodrolfe Road, Tollesbury Road, Essex**

- 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 Ms Ann Whitwham for a full award of costs against Maldon District Council.
  - The appeal was against an enforcement notice alleging the unauthorised erection of a dwellinghouse.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **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. The application is for a substantive award relating to the issues arising from the merits of the appeal. Examples of the type of conduct where a local planning authority may be at risk of an award of costs are provided in Paragraph 049 of the PPG. No specific example is drawn to my attention, but the list is not exhaustive. One example listed in the PPG is where a local planning authority fail to produce evidence to substantiate each reason for refusal on appeal.
4. In this appeal the Council failed to submit an Appeal Statement despite an extension of time being granted. It also failed to respond to this costs application even after a reminder was sent. It was only some time afterwards as the site visit approached that the Council then enquired about making late submissions by which time it was far too late in the process.
5. The failure to defend the appeal is a factor relied upon by the appellant as an example of unreasonable behaviour. The appellant also considers the Council acted unreasonably in issuing an enforcement notice for the unauthorised erection of a dwellinghouse when the dwelling under construction benefits from planning permission.
6. An appeal was brought on ground (c) (among other grounds) to argue that there had not been breach of planning control.
7. When planning permission was granted it was for a dwelling with a two-storey front projection as shown in the approved drawings. The appellant maintained

that the dwelling was always intended to be built in two phases and it remains under construction. She is aggrieved that the Council took enforcement action despite repeatedly explaining her intention to complete the construction once in a position to do so.

8. From outward appearances it appears to be a substantially complete dwelling. However, a condition attached to the planning permission required the submission and approval of a construction method statement. The approved document identified that construction would be undertaken in two stages; at the back and front. Whilst it was not explicit which works fell within each phase, the only sensible conclusion was that the front projection was the second stage of development. There was clear evidence the foundations for the two-storey projection had been laid which supported the appellant's case that works were ongoing. The building would need to be finished internally before it could be occupied.
9. The appellant was able to explain that the completed roof form and fully rendered front elevation (which gave the impression of a completed building) was in fact to secure the structure and weather-proof it before works can continue. The dwelling was not of standard construction having been built from straw bales which explained the somewhat unconventional approach.
10. On the face of it, the building works thus far comprises stage 1 of the approved dwelling and the deviation to block up the doorways was temporary and minor in nature. It did not suffice to prompt the conclusion that the dwelling has been built without planning permission.
11. Where planning permission is granted for a single building operation it is not possible to deviate from the approved plans to complete part with a view to returning to it at some indeterminate time in the future. But, from the evidence which the Council has failed to contest that is not what has occurred.
12. Having issued the enforcement notice it would reasonably be expected that the Council would defend its decision and respond to the points made by the appellant. This was particularly important because of the approved construction method statement identifying a second stage of development which was most likely for the front projection. It appears to provide justification for the development as it currently appears. It was not for me to speculate on what the Council might have wanted to argue.
13. Under ground (c) the appellant had the burden of proof which she was able to discharge in the absence of a statement of case from the Council.
14. It was only after the site visit and many weeks after evidence should have been filed, that the Council sought to respond. There is no apparent reason why the appellant could not finish the development in accordance with the approved plans. In failing to substantiate its grounds for issuing the enforcement notice in a timely manner, the Council acted unreasonably. The appellant has incurred costs in the use of her professional representatives to bring and argue the appeal which could have been avoided.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Ms Ann Whitwham the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Maldon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*KR Seward*

INSPECTOR