



Costs Decision

Hearing held on 20 October 2020

Unaccompanied site visit made on 28 June 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th October 2020

Costs application in relation to Appeal Ref: APP/C1950/X/19/3227923 112 Hollybush Lane, Welwyn Garden City, Herts AL7 4JW

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Welwyn Hatfield Borough Council for a full award of costs against Mr Marc Tims.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for a development described as: Loft conversion completed June 2013
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Costs application in relation to Appeal Ref: APP/C1950/X/19/3230066 112 Hollybush Lane, Welwyn Garden City, Herts AL7 4JW

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Welwyn Hatfield Borough Council for a full award of costs against Mr Marc Tims.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for a development described as: Proposed single storey rear extension for disabled applicant sleeping and washing arrangements.
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Decision

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

The Submissions for Welwyn Hatfield Borough Council

2. The costs application was submitted in writing at the Hearing. The following additional points were made orally:
 - The appeals have been a complete waste of time as Mr Tims has not understood the case is hopeless.
 - Mr Tims has used the appeals as a vehicle for airing unrelated criticisms of the Council and this is not the purpose of a lawful development certificate appeal.

The Response by Mr Marc Tims

3. The response was made orally at the Hearing and is summarised in the Annex at the end of this decision.

Reasons

4. The Planning Practice Guidance (PPG)¹ 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.
5. The PPG² states that an appellant is at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. The Council considers this is the case for these appeals, which have resulted in it incurring unnecessary expense preparing for the Hearing.
6. In summary, I have found in my appeal decisions that (i) the existing dormer is not lawful as it constitutes a contravention of a requirement of an enforcement notice which is in force and it is on an unlawful building, and, (ii) the proposed rear extension would not be lawful as it would be attached to an unlawful building and it would not comply with permitted development limitations concerning height, depth, width and proximity to the boundary.
7. The Council have drawn my attention to a history of planning applications on the appeal site, which the Council declined to determine. But from the information provided, these do not indicate why applications for lawful development certificates for the dormer or a rear extension would have no reasonable prospect of succeeding.
8. The appellant has been convicted for failing to comply with requirements of an enforcement notice. So the appellant would have been aware that the two storey side extension which is the subject of the enforcement notice is a breach of planning control. But from the information provided, this in itself does not necessarily explain for the appellant, who is unrepresented, why applications for lawful development certificates for the dormer or a rear extension would have no reasonable prospect of succeeding.
9. It is the appellant's view that the dormer is not 'singled out' by the requirements of the enforcement notice. Indeed, the dormer is not explicitly mentioned in its requirements. I do not agree with the appellant's view in this regard for reasons I have set out in my appeal decision. But I do have sympathy with his view given he is unrepresented and given the Council's drafting of the enforcement notice could have been clearer. It could have made it more obvious the dormer could not survive requirement (a) or requirement (b) of the notice.
10. The Council concedes that it was wrong to decline to determine the lawful development certificate (LDC) applications. The letters it issued, dated 29 April 2019 and 9 May 2019, were confusing as they purported to draw on a power which the Council now accepts does not apply to LDC applications. Moreover, neither letter set out the reasons why the Council now considers the LDC applications have no reasonable prospect of succeeding at appeal.
11. From the information provided, it only became clear that the appeals had no reasonable prospect of succeeding once the Council had set out its position in its appeal statements. However, there is an important context in this case. This includes:

¹ Appeals, Paragraph: 030 Reference ID: 16-030-20140306

² Appeals, Paragraph: 053 Reference ID: 16-053-20140306

- the Council's inclusion of drawing 701/5 in Mr Tims's earlier planning application decision³ (discussed at length by the previous Inspector in his decision⁴);
 - the Council's drafting of the enforcement notice, which I refer to above; and
 - the Council's aforementioned confusing letters.
12. Given the above factors, I appreciate why, based on his experience, the appellant may not believe what is said by the Council, including in its statements for these appeals. Therefore, in my judgement, persisting with the appeals after receiving the Council's statements was not unreasonable behaviour by the appellant in this context.
13. The appellant considers there is no reason whatsoever why the Council's costs application had not been submitted earlier. But in the case of hearings, the PPG⁵ states all costs applications must be formally made to the Inspector before the hearing is closed. So there is no basis to object to the timing of the Council's claim.
14. The appellant considers that if he removed the dormer there is nothing stopping it being put back under permitted development rights. This is not the scenario before me in either of the LDC applications and if the appellant wishes to ascertain whether any proposal would be lawful, he may make an application to the Council under section 192 of the 1990 Act referred to above. But it would be pointless doing so whilst the two storey side extension remains an unlawful building.

Conclusion

15. Considering all of the above points, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

L Perkins

INSPECTOR

³ Ref: N6/2010/3066/FP granted 17 February 2011

⁴ APP/C1950/C/14/2218542, 43, dated 27 November 2014

⁵ Appeals, Paragraph: 035 Reference ID: 16-035-20161210

Annex: The Response by Mr Marc Tims

1. As a matter of good practice cost applications should be made in writing before the hearing and there is no reason whatsoever why the Council's claim had not been submitted earlier.
2. There is nothing in the Council's claim relevant to today.
3. The Council are represented and we are lay people.
4. The Council are making their own determination of the law.
5. The appeals do have a reasonable prospect of succeeding.
6. The Council's refusal was not well-founded and they have not worked a way forward.
7. The extension was not unauthorised as it was built as per drawings.
8. We were told to put in an application for retention and the Council have thrown it back at us. We have applied, applied and applied.
9. The conviction is a red herring.
10. Why was Mrs Tims not convicted? We are joint owners and she has a vested interest in this matter.
11. The Council do not communicate with Mrs Tims, they do not want to deal with her and sent her no letters.
12. The Council will not give us guidance and cannot be bothered.
13. There was no lawful excuse for the Council to rely on section 70C, Mr Lewin says so.
14. The Council is not engaging with residents that they oversee.
15. The Council bang on about planning merits.
16. The Council is happy to circumnavigate rules and the law when it suits them.
17. The Council decided to bring the enforcement notice in.
18. Council officers lied and committed perjury in court.
19. Should I be made to pay costs because they have lied?
20. We have lowered the roof and we cannot sell the property and the Council will not come out and check it.
21. Even if we removed the dormer there is nothing stopping us putting it back because we have still got permitted development rights.
22. What is to stop a new owner putting an extension on?
23. Mr Tims gets dealt with harshly all the time.