
Costs Decision

Site visit made on 16 March 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Costs application in relation to Appeal Ref: APP/T1410/C/20/3261111 Land at Old Town Service Station, High Street, Eastbourne BN21 1HQ

- 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 Pricewatch Limited for a full award of costs against Eastbourne Borough Council
 - The appeal was against an enforcement notice alleging the erection of a canopy structure to the front forecourt of the land.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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.
3. The PPG advises that a local planning authority may be at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. An example could be the failure to produce evidence to substantiate each reason for refusal (or reason for issuing an enforcement notice) on appeal, and vague, generalised or inaccurate assertions about a development's impact, which are unsupported by objective analysis.
4. The appellant claims that the failure of the Council to substantiate their reasons for issuing the notice has led to the appellant having to incur costs in bringing the ground (a) appeal, and that more diligent investigation would have avoided the need to serve the notice in the first place.
5. The Council has not provided detailed evidence to substantiate their reasons for issuing the notice, whether in the form of an officer report or appeal statement, and it has relied on the briefly stated reasons for issuing the enforcement notice. The decision notice refusing the earlier planning application for a forecourt canopy has been provided, but it was of a different design and scale and is not therefore directly comparable to the appeal development. The Council has not explained with any objective analysis how the development is harmful to the Old Town Conservation Area and has therefore not substantiated its reasons for issuing the enforcement notice.
6. In the planning judgement, it appears to me that having regard to the provisions of the development plan, the enforcement notice should not

reasonably have been served, as the development is not in conflict with the relevant policies. The serving of the enforcement notice therefore constitutes unreasonable behaviour, contrary to the PPG, and as a result the appellant has been faced with the unnecessary expense of lodging the appeal.

7. I therefore find that unreasonable behaviour resulting in unnecessary or waste expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

8. 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 Eastbourne Borough Council shall pay to Pricewatch Limited, 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.
9. The applicant is now invited to submit to Eastbourne Borough 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.

N Thomas

INSPECTOR