
Costs Decision

Site visit made on 16 March 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 04 May 2021

Costs application in relation to Appeal Ref: APP/C1950/C/20/3259464 Land situated at and known as 51 School Lane, Welwyn AL6 9PL

- 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 Mrs Amy Victoria Pattison for a full award of costs against Welwyn Hatfield Borough Council.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a detached outbuilding and associated engineering operations involving the construction of an access driveway, other hard surfaces, a retaining wall and raising the level of the land.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably, and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. I acknowledge that although costs can only be awarded in relation to unnecessary or wasted expense within the appeal process the PPG states that behaviour and actions at the time of a planning application can be taken into account.¹ Whilst, the appeal is not against the refusal of a planning application the planning history on this site is before me and part of that relates to the development that is affected by the enforcement notice.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the substance of the matter under appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour for both². The application was made in writing and therefore there is no need to rehearse the detailed points made.
4. The main thrust of the applicant's case is that she sought and received guidance from the Council in order to ensure the erection of the outbuilding at this appeal property was lawfully undertaken. The Council granted a Certificate of Lawfulness (LDC) for the erection of an outbuilding on the site in 2018. She considers that the outbuilding was built lawfully under the details assessed and

¹ Paragraph: 033 Reference ID: 16-033-20140306

² Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

approved by the Council through that LDC regardless of whether it was procedurally correct to issue that certificate. She therefore considers that the Council was unreasonable in issuing the enforcement notice.

5. I can understand that the Council assessing whether the outbuilding and the overall development required planning permission may have come as a surprise to the applicant given the planning history of the site. However, the interpretation of whether development complies with an LDC and/or meets the limitations and conditions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) is a matter of judgement.
6. In addition, I have found within the ground (c) appeal that planning permission is required for the alleged breach of planning control as described within the enforcement notice and that the outbuilding has not been constructed in accordance with the LDC. Moreover, even though I have disagreed with the Council within the ground (a) appeal and deemed planning application, whether a development harms the character and appearance of an area is a matter of judgement.
7. As such, in these respects I do not consider that the Council have acted unreasonably by issuing the enforcement notice that is the subject of the appeal before me.

Conclusion

8. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, the application for an award of costs is hereby refused.

D. Boffin

INSPECTOR