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## Costs Decision

Site visit made on 28 April 2021

**by N Thomas MA MRTPI**

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

**Decision date: 8 June 2021**

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### **Costs application in relation to Appeal Ref: APP/E2205/C/19/3241598 Land at Caradon, Mill Lane, Pluckley, Ashford, Kent TN27 0SL**

- 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 Victoria Buchanan for a full award of costs against Ashford Borough Council.
  - The appeal was against an enforcement notice alleging the erection of a building (shown marked in the approximate position on the attached plan) ('the Building') used as an independent dwellinghouse.
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### **Decision**

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

### **Reasons**

2. 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 PPG gives examples of the types of behaviour that may give rise to a procedural or substantive award of costs against a local planning authority, although the list is not exhaustive. These can include, lack of co-operation with the other party; failure to carry out adequate investigation prior to serving an enforcement notice; persisting in objections to a scheme or elements of a scheme which an Inspector has previously indicated to be acceptable.
4. The appellant claims that the Council was uncooperative and unwilling to enter into discussions with the appellant, which could have avoided the need to serve an enforcement notice. The Council's own Enforcement Procedure Chart states that following the refusal of any retrospective planning application the Council will endeavour to negotiate for remedial works for an informal solution. Furthermore, it was not necessary to serve the notice as there was no use as an independent dwelling being carried on, and following the s78 appeal being allowed, the building had gained planning permission. The Council failed to take the opportunity to withdraw the notice at this point, but instead sought to persuade the appellant to withdraw her appeal against it.
5. The evidence however indicates that there was a dialogue between the appellant (or her agent) and the Council, and it is not the case that the Council failed to cooperate. The Council decided that it was expedient to issue an enforcement notice, in order to prevent an unauthorised use gaining immunity through the passage of time. Even though the s78 appeal was allowed, this did

not give permission for the use of the building as an independent dwelling, which could still have gained immunity if the notice had not been served, or was subsequently withdrawn by the Council. Although I have found that the alleged use did not occur, the Council was entitled to come to the conclusion that it had, on the basis of the information before it. The delay in serving the notice appears to be due in some part to the submission of applications to gain planning permission or a lawful development certificate for the building and the use.

6. The Council requested that the appellant withdraw their appeal to save further expense for both parties, and it is not clear how this request could have led to wasted expense on the part of the appellant.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*N Thomas*

INSPECTOR