



Costs Decision

Site visit made on 6 July 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Costs application in relation to Appeal Ref: APP/C3430/C/21/3270628 Summer Leys, Strawmoor Lane, Oaken, Wolverhampton WV8 2HY

- 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 South Staffordshire Council for a full award of costs against Mr Philip Burrows.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a car port.
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Decision

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

Reasons

2. The Planning Practice Guidance advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The basis of the Council's claim for costs is that the appellant had already received a refusal for their planning application to retain the carport, and because of their refusal to apply for an application for a certificate of lawful existing use or development (LDC), as requested by the Council. Furthermore, it considers that by submitting a s78 application, the appellant understood and agreed that the carport was development. On this basis the Council considers the appellant has acted entirely unreasonably in making the appeal which has resulted in the Council incurring unnecessary costs.
4. The appellant argues that the Council's application for costs is fundamentally flawed for 3 reasons: a) the appeal against the enforcement notice (EN) has not been pursued under Ground (a) and thus the planning merits would not be re-considered; b) there was no legal obligation to apply for an LDC and in the absence of an LDC application, this would not prevent an appeal against an EN; c) the Inspector's s78 decision letter stated that they considered that the carport may be immune from enforcement action and that the carport itself appears not to constitute development. Accordingly, the appellant considers the Council is unable to demonstrate that they have acted "unreasonably" in pursuing this appeal. Furthermore, the appellant claims for it to be entirely reasonable to pursue the "legal" arguments in an EN appeal and that the Council's arguments fail to satisfy the high threshold of unreasonableness.

5. From the Council's appeal submissions, the erection of a carport was brought to its attention in July 2017. A planning application¹ was submitted in September 2017 which was refused by the Council on 13 November 2017 and an appeal² dismissed on 3 July 2018. On 24 October 2018 the Council wrote to the appellant with two options to remedy the planning breach. The first option was to apply for an LDC or alternatively, to remove the unauthorised structure from the land.
6. From the correspondence between the parties, the Council has clearly stated its opinion that the carport is a form of development that requires express planning permission. Following an unsuccessful appeal, the appellant focussed on wording within the decision letter that the "carport appears to be immune from enforcement action" overlooking the fact that the Inspector considered that the lawfulness of the building could only be formally determined by an application for an LDC. The appellant, who remained steadfast that the carport was not "development" chose not to apply for an LDC and the Council subsequently issued an EN for its removal.
7. Notwithstanding the above, the appellant had a statutory right to appeal against the issuing of the EN, as they would have had the right to appeal against a refusal to issue an LDC, had one been applied for and refused. Furthermore, the appellant pursued the EN appeal on legal grounds only and accordingly I consider they have not exercised their right to appeal unreasonably.
8. In these circumstances, I am not satisfied that there was unreasonable behaviour on the part of the appellant that led the Council to incur unnecessary or wasted expense in connection with the appeal against the EN. I conclude accordingly that an award of costs, either partial or in full, is not justified and the costs application should not succeed.

SA Hanson

INSPECTOR

¹ Ref 17/00836/FUL

² Appeal Ref: APP/C3430/D/18/3195053