
Costs Decision

Site visit made on 9 January 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Costs application in relation to Appeal Ref: APP/Y3615/C/20/3256615 Land to the north side of Thrashers, Old Lane, Cobham KT11 1NA

- 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 Guildford Borough Council for a full award of costs against Mr Auday Tokatly.
 - The appeal was against an enforcement notice alleging, without planning permission, the erection of two detached outbuildings and the installation of a hard surface.
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Decision: the application is refused

Reasons

1. The Planning Practice Guidance 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. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against an appellant. These examples include lack of co-operation with the other party in providing information or in responding to a planning contravention notice; providing information that is shown to be manifestly inaccurate or untrue; and deliberately concealing relevant evidence.
2. The essence of the Council's claim is that, in relation to the appeal on ground (d), the appellant has submitted information which directly conflicts with information previously provided to the Council. The Council considers that the appellant was provided with opportunities to provide the date of substantial completion of the development alleged in the notice on multiple occasions but did not provide the date he has now given. This includes within a Planning Contravention Notice (PCN). The Council also considers that, in relation to the appeal on ground (a), the appellant relies on a fallback position that was fundamentally flawed.
3. In terms of the Council's claim insofar as it relates to ground (d), the starting point is the appellant's response to the PCN. I found the response to be vague, evasive and in part inaccurate. Furthermore, the information provided did, as the Council point out, conflict with that later provided in the appellant's Statutory Declaration. In this respect, the salient point is that the information subsequently provided by the appellant in his Statutory Declaration was available to him at the time of responding to the PCN. I hesitate to find that

the appellant was fundamentally dishonest in his response to the PCN and that he deliberately sought to mislead the Council. Nevertheless, in my view, the appellant was clearly in a position to have provided a more accurate and helpful response to the PCN but manifestly failed to do so.

4. The appellant responds, in part, by suggesting that had the PCN been served and the subsequent enforcement notice issued in a timely manner following the Council's initial site visit then the first outbuilding would not have become lawful through the passage of time. That may well have been the case but it does not negate the duty of the appellant to provide full and accurate responses to the PCN when it was served. In failing to provide those, I find that the appellant did act unreasonably in the context of the Planning Practice Guidance.
5. However, it is clear from the Council's Final Comments that it did not consider the appellant to have shown in his evidence that no enforcement action could be taken in respect of any breach of planning control that may have been constituted by those matters. I have no reason to believe that the Council would have responded any differently had that evidence been submitted with the PCN or during the initial stages of the appeal.
6. It is therefore in my view unlikely that the Council would have conceded that the matters stated in the notice had become immune from enforcement action, such that it did not issue the notice in the first instance or alternatively withdrawn the notice in the light of the appellants' evidence on appeal. The corollary is that the Council would have incurred expense in defending the appeal on ground (d) in any event, irrespective of whether that evidence was submitted with the PCN, the initial appeal documentation or at statement stage. It follows that the Council did not incur any unnecessary or wasted expense in responding to the appellant's appeal on ground (d).
7. Turning now to the appeal on ground (a), I concur with the Council that the specific fallback position relied upon by the appellant was fundamentally flawed. But that does not detract from the underlying principle that the appellant is entitled to rely on permitted development rights available under the Town and Country (General Permitted Development) (England) Order 2015 for the construction of outbuildings within the curtilage of the main dwelling. Although the point was not fully or correctly developed by the appellant, and I did not find in favour of the appellant in relation to it, there is nothing unreasonable in him raising the point as part of his appeal on ground (a).
8. The Planning Practice Guidance advises that costs may only be awarded where a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process (my emphasis). Both of those conditions have not been met in this case, such that an award of costs in favour of the Council is not justified.

Paul Freer
INSPECTOR