



Costs Decision

Site visit made on 21 September 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 08 October 2021

Costs application in relation to Appeal Ref: APP/C3240/C/20/3258746 77 Hadley Park Road, Hadley, Telford TF1 6PS

- 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 Telford and Wrekin Council for a full award of costs against Mr Hassan Akhtar.
 - The appeal was against an enforcement notice alleging the unauthorised erection of a free standing metal outbuilding.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Unreasonable behaviour may be either procedural – relating to the appeal process, or substantive – relating to particular issues arising from the merits of the appeal. The PPG goes on to state that the right of appeal should be exercised in a reasonable manner and an appellant is at risk of an award of costs being made against them if the ground of appeal had no reasonable prospect of succeeding.
3. The appeal against the enforcement notice issued by the Council was made on grounds (b), that the breach of alleged planning control has not occurred as a matter of fact, ground (c), that there has not been a breach of planning control and ground (d), that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
4. The grounds of appeal submitted on behalf of Mr Hassan Akhtar state that the *'existing garage is a like for like replacement of the original garage., which was in a poor state of repair'*. It goes on to state that *'Mr Akhtar took care to replace the garage with a size for size structure'*. It is very clear from this evidence that the outbuilding the subject of the current appeal is a new outbuilding which replaced the previous one. This is also clear from the observations I made at the site visit and also from photographic evidence submitted which shows that the existing outbuilding is not at all similar to the one which previously existed on the site and this will also have been abundantly clear to the appellant, Mr Akhtar.

5. In the light of the above the appellant's appeal on ground (b) is unreasonable since the appellant's evidence is contradictory, stating that the outbuilding is a replacement whilst at the same time contending that the erection of a free standing metal outbuilding has not occurred as a matter of fact.
6. The appellant has also claimed that as a replacement the building is a size for size structure, but the evidence is very clear that this is false because the replacement outbuilding is much larger than the original garage. The appellant must know that this is the case and therefore the appeal on ground (c) that there has been no breach of planning control is also unreasonable as it is based on false and incorrect information. Consequently, there has been unreasonable behaviour by the appellant.
7. As set out in the Main Decision, in order to succeed on ground (d) it would need to be demonstrated that the free standing metal outbuilding was substantially completed by 7 August 2016 in order to be immune from the Council's enforcement action. As far as I can see the only evidence submitted in support of the appeal on ground (d) is sales particulars from 1999 when I understand that appellant purchased the property in question. The only reference to an outbuilding is 'Detached garage' and there is no evidence in this document to support the claim on ground (d) that at the time the enforcement notice was served it was too late to take action against the outbuilding. Consequently, the appeal on ground (d) has been made without merit as the appellant will have known that the development had not been substantially completed before the material date. The appeal on ground (d) is not supported by evidence with respect to why it is immune from planning enforcement action.
8. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.
9. 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 Mr Hassan Akhtar shall pay to Telford and Wrekin Council, 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.
10. The applicant is now invited to submit to Mr Hassan Akhtar, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A A Phillips

INSPECTOR