
Costs Decision

Site visit made on 25 October 2021

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2021

Costs application in relation to Appeal Ref: APP/P4225/C/21/3276461 39 Wilton Road, Heywood, OL10 1AS

- 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 Mr Paul Horrox for a full award of costs against Rochdale Metropolitan Borough Council.
 - The appeal was against an enforcement notice alleging the installation of an amateur radio aerial attached to a lawful radio mast.
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Decision

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

Reasons

2. The appellant submits that the Council's decision to issue the enforcement notice in 2020 in respect of the very same development which it had investigated in 2019, and on which it had decided to take no further action, was unreasonable. The Planning Practice Guidance (PPG) is in harmony with the Courts' endorsement of the need for consistency in decision making¹, by indicating that not determining similar cases in a consistent manner places LPAs at risk of an award of costs.
3. The Council submits that it has dealt with this as a single case, comprising an initial investigation and a subsequent review, which led to the issue of the notice. Had the appellant complied with the terms of the planning permission granted in 2019, there would have been no need for the issue of the notice.
4. The PPG advises that costs may 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.
5. In response to a complaint, the Council visited the site and, by letter of 24 June 2019, informed the appellant that the aerial was not in accordance with the 2019 permission (ref: 18/01411/HOUS). The letter required the appellant to revert to the approved scheme or to apply retrospectively for the development that had been carried out.
6. By letter of 28 June 2019, the Council wrote to the appellant noting that the overall width of the aerial "may be slightly larger than approved", noting the

¹ Guildford BC v SSCLG and Moffat [2009] EWHC 3531 (Admin)

difficulty of measuring it. The letter went on to note the discretionary nature of enforcement action and to state "In this instance, it is the Authority's decision that planning enforcement action is not expedient." The letter confirmed that the case was closed.

7. Following an exchange of emails, the Council wrote to the appellant on 5 August 2019, inviting a retrospective application within 28 days or it would consider the expediency of taking enforcement action. It appears that the Council suspended the issue of enforcement notices during the pandemic lockdown, unless of an urgent nature, due to the difficulty of compliance. The notice was not issued until 27 May 2021.
8. This is not a case where the Council has made inconsistent decisions on two similar cases. Here, there has only ever been a single unlawful development. Following receipt of the Council's letter of 28 June 2019, the appellant would have had the legitimate expectation that the Council had not found it expedient to take enforcement action and had closed the case. It must have come as a surprise to receive the Council's letter of 5 August inviting a retrospective application, in the absence of which, the expediency of taking enforcement action would be considered. I find this volte-face rather surprising, and somewhat unreasonable, given that the very same aerial had already been inspected twice by the Council. However, the Council clarified its new position relatively quickly and the appellant did not appear to take any further, consequential action in response to the 28 June letter.
9. The extremely long delay in issuing the notice was most unfortunate and might, in normal times, have indicated it was not expedient to pursue enforcement action. However, it was understandable in the most unusual circumstances of the pandemic.
10. Whilst I find unreasonable behaviour on the part of the Council in its inconsistent communications with the appellant in 2019, this did not appear to have caused the appellant to incur unnecessary expense. The appellant could have made an application retrospectively, to attempt to regularise the planning position in 2019, but appears to have chosen not to do so. In the event, the formal decision of the Council was to pursue enforcement action and it appears that, by this stage, an appeal could not have been avoided. The application for costs does not succeed.

B.S. Rogers

Inspector