



Costs Decision

Inquiry Held on 9 and 10 November 2021

Site visit made on 10 November 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 10 December 2021

Costs application in relation to Appeal Ref: APP/H1515/C/20/3265150 Land at Rustic Dene, Parkwood, Doddington Road, Doddington, Essex CM15 0SN

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Gonsalves for a full award of costs against Brentwood Borough Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the creation of an additional separate primary self-contained residential dwelling house known as Malaika House ie planning unit within the existing residential curtilage of the land known as Rustic Dene, shown edged in red for identification purposes only on the plan attached to the notice.
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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. At paragraph 48, it is explicit that local planning authorities are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
3. The appeal has succeeded under ground (d), and my Decision is clear that the Council's case for issuing the notice (and defending the appeal) under that ground lacked any significant merit in the face of a considerable amount of precise and unambiguous evidence from the appellant that immunity had been acquired for the use of Malaika House as a separate dwelling.
4. The application for a Lawful Development Certificate was rejected by the Council on 26 November 2015 without any reasons given for the alleged unlawfulness and, further to that notification, the appellant's agent had attempted to engage with the Council on the issues through repeated unanswered correspondence. Had the Council positively engaged with the 5 letters the appellant's agent had sent on 9 December 2015, 28 November 2016, 6 November 2019, 2 December 2019 and 9 September 2020 I find it likely that the Council would have better understood the issues and consequently the need for a notice (issued on 11 November 2020) and subsequent appeal would have been obviated.

5. Paragraph 49 of the PPG cites as unreasonable behaviour the failure to substantiate each reason for refusal on appeal as well as vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
6. Mrs Vint contradicted the highways-related reason for issue cited in the notice by giving evidence on behalf of the Council to the Inquiry that the level of parking provision met its policy standards and that she had personally confirmed with the Highways Authority that there was no unacceptable impact on highway safety. The unreasonableness of the Council over this matter was reinforced by the fact that it confirmed at the opening of the Inquiry on day 1 that it was pursuing highway safety as a live appeal issue – thereby forcing the appellant's team to deal with it in its evidence – only for Mrs Vint to make the above concessions in her evidence on day 2. I can see no acceptable reasons why those concessions could not have been made earlier, or indeed why the notice was issued citing highway safety issues within this context.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 Brentwood Borough Council shall pay to Mr A Gonsalves, 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.
9. The applicant is now invited to submit to Brentwood Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR