
Costs Decision

Site visit made on 10 January 2022

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

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Costs application in relation to Appeal Ref: APP/B0230/C/21/3273205 Land at 17 Denbigh Road, Luton, Bedfordshire, LU3 1NR

- 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 Saeed Ahmad for a full award of costs against Luton Council.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a detached outbuilding in the rear garden.
-

Decision

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

Reasons

2. The appellant submits that the Council's measurement of the height of the outbuilding was not supported by evidence. It failed to take account of the excavation of the ground and to explain why it did not assess the outbuilding against Class E of Part 1 to Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 [GPDO] to confirm whether it was expedient to take enforcement action.
3. The appellant has demonstrated why none of the adverse impacts alleged by the Council can be justified and why the planning condition proposed by the Council fails to address any of its reasons for taking enforcement action.
4. I have seen no response from the Council.
5. The Planning Practice Guidance 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.
6. The appeal on ground (b) appears somewhat misjudged and was effectively the same as the appeal on ground (c), to which I shall now turn.
7. The sole point of dispute as to whether the outbuilding falls within the parameters of Class E of the GPDO is the height of the building from ground level. In the written representations, the appellant stated this to be 2.5m and the Council 2.8m. In order to resolve this, at my site visit I asked the appellant and the Council's officer to give me agreed measurements from ground level immediately adjacent to the building. These varied between 2.64m at the eastern end and 2.55m at the western end. Therefore, whilst the Council's initial measurement was unreasonably inaccurate, the agreed height was over 2.5m and therefore outwith the parameters of Class E.

8. Whilst the appellant's representations referred to a lowering of the original ground level of the garden as part of the development, the onus is on him to demonstrate his case. Therefore, whilst I observed a step in the garden from the patio, I was given no indication or measurement of any excavation and thus had no reason to rely on any measurements other than the dimensions provided to me on site. Accordingly, the Council's inaccurate measurement did not lead to the cost of an unnecessary appeal by the appellant on ground (c).
9. Turning to the appeal on ground (a) the reasons for issuing the notice were, in summary, the harmful impact on the character and appearance of the area and the lack of remaining private amenity space. However, the Council did not address the issue of private amenity space at all in its representations and I saw no evidence to back up this assertion. Furthermore, the Council raised a new consideration that the building has an overbearing relationship with the neighbouring land but provided no evidence to support this.
10. The failure to properly support its case and the raising of a new issue, which required the appellant's response, are in my view examples of unreasonable behaviour which have led to some unnecessary expense.
11. On the main issue in this case, the Council focused on the poor facing materials and rejected the possibility of a planning condition designed to address this. That is a matter of planning judgement on which I disagree with the Council. However, the Council's decision to issue an enforcement notice was not unreasonable behaviour because it had no means of knowing whether, or how, the unauthorised development would have been completed externally.
12. The Council's suggested condition that there should be no kitchen facilities in the outbuilding, in order to prevent the formation of an independent living unit was a matter on which I disagreed, as such a change of use would require planning permission. However, I do not regard the raising of this issue as unreasonable.
13. Having regard to the above conclusions, a full award of costs is not justified in this case. However, the failure to properly address the matters raised in para.9 above was unreasonable and has led to the appellant's having to go to the additional expense of responding to them in his representations. Accordingly, the application succeeds to this limited extent.

Costs Order

14. 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 Luton Council shall pay to Mr Saeed Ahmad the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in addressing the issues of private amenity space and whether the development appears overbearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Luton 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.

B.S. Rogers Inspector