
Costs Decision

Site visit made on 27 January 2022

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 February 2022

Costs application in relation to Appeal Ref: APP/Z2260/C/21/3269981 1 St James Terrace, Birchington, Kent

- 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 Stuart Carter for a full award of costs against Thanet District Council.
 - The appeal was against an enforcement notice alleging the erection of an unauthorised single storey pitched roof porch to the front elevation.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellant submits that the Council acted unreasonably because it did not have proper regard to the fallback position in respect to the development and did not include 'lesser steps' in the requirements of the enforcement notice.
4. A planning application for the erection of a single storey pitched roof porch to the front of the property was refused in July 2019 (Ref: FH/TH/19/0195). It is evident in its committee report that the application included the porch and the front canopy and that the Council had regard to the fallback position (Classes A and Class D of Schedule 2 of Part 1, of the Town and Country Planning (General Permitted Development) (England) Order 2015). Moreover, following the planning refusal and prior to the notice being issued, the appellant had the opportunity to remedy the breach of planning control which included consideration of the fallback position.
5. The appellant refers to the Council's summary in its appeal statement which indicates that lesser steps could overcome the harm caused. The Council as clarification in its final comments states that it recognises that certain works could be carried out without the need for planning permission but any porch in this location is harmful to the pattern of development. In any event, the comments of the Council in this regard were made after the notice had been issued and the appeal made.
6. The Council with reference to case law (Mansell V Tonbridge & Malling Borough Council [2017] EWCA Civ 1314) and communication with the appellant, has

adequately explained why it had limited information to be convinced that the appellant would implement the fallback position and why it considered the fallback position was not a realistic possibility. The Council also provided sufficient explanation regarding why it considered that the appeal scheme is equally or more harmful than the fallback.

7. Whilst I have come to a different conclusion to the Council on whether the fallback is a realistic possibility and on the amount of weight to be attributed to it, it is not the case that the Council failed to recognise the fallback position when issuing the notice.
8. Moreover, it is clear from the requirement to remove the porch from the front of the property, that the purpose of the notice was to remedy the breach of planning control. It is for the appellant to put forward an 'obvious alternative' or 'lesser step' that would achieve the purpose of the notice.
9. As detailed in my appeal decision under the ground (a) appeal, I have found that the effect of the porch as built on the character and appearance of the appeal property and the surrounding area when compared with the fallback does not result in any additional material harm. I have allowed the appeal, quashed the enforcement notice, and granted planning permission on the deemed planning application. Consequently, although I did not need to consider the appellant's case under the ground (f) appeal, by making a ground (f) appeal, the appellant had the opportunity to make a case as to why he considered that lesser steps could achieve the purpose of the notice.
10. Thus, the Council did not behave unreasonably by not including lesser steps in the notice, and it was necessary for the appellant to make an appeal. The costs incurred by the appellant in pursuing the appeal, were the normal costs arising when the right of appeal is exercised. Any delay in the sale of the property, and expenses in relation to Solicitors and planning consultants is a matter for the appellant in pursuing the right of appeal.
11. For the above reasons, and with regard to all other matters raised, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated.

Elizabeth Jones

INSPECTOR