



Costs Decisions

Site visit made on 24 November 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 21 February 2022

Costs application in relation to Appeal Refs:

APP/P1560/C/20/3250984 & 3250985

209 London Road, Clacton-on-Sea CO15 4ED

- The applications are 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 applications are made by Lloyd Otte (3250984) and Chanelle Otte (3250985) for a full award of costs against Tendring District Council.
 - The appeals were against an enforcement notice alleging:
The carrying out of substantial building operations to rebuild and alter a former dwelling house at the property and not in accordance with the approved plans and drawings.
-

Decision

1. The applications for awards of costs are allowed in the terms set out below.

Reasons

2. I have determined the application in the context of the government's Planning Practice Guidance. This includes the advice 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 first allegation of the enforcement notice states that new windows (plural) have been inserted in the side elevation without planning permission. This is not strictly the case since all three permissions include 2 new windows and an existing window in that wall.
4. The Council endorse the view put forward by owners of the neighbouring house – 203 London Road – that a new window has been inserted in the flank of the building with no obscured glazing. Whilst this is a new window – replacing an original window – planning permission ref. 19/00964/FUL includes a window in this position. There is no indication it would be obscure glazed, or any condition requiring it should be. Whether or not it was originally obscure glazed is not apparent in the evidence. Nevertheless, it is now obscure glazed to a high degree of opacity. I consider the Council were unreasonable in not fully investigating what had been built and its likely effects on privacy for neighbouring occupiers.

5. Regarding the extension, it is the case that it extends about 0.2 of a metre further back than shown and dimensioned on the approved plan. There are no indications of the height of the extension in any of the permissions. However, visually the extension appears to be very much of the same proportions as shown on the approved drawings.
6. The extension as built has what is technically a parapet roof as opposed to a fascia and external gutter. However, as I say in my decision, the parapet is effectively a low kerb to allow formation of an internal gutter. It cannot by any manner of means be considered as a parapet guarding a flat roof suitable for use as a balcony. I consider it was unreasonable of the Council to maintain that this is a raised platform/balcony, when there is no access to the flat roof, or any guarding along its edges.
7. I accept there are divergences from the drawing approved under planning permission ref. 19/00964/FUL. However, as a matter of fact and degree these do not amount to material changes that have significant planning consequences. I concur with the appellants view that the Council did not properly ascertain the facts of the development or identify consequent alleged harm, even though harm is identified in the notice.
8. All the approved schemes entail substantial increases in size and major internal alterations to the original bungalow. In that context I find the Council's description of the proposals in the notice as operations '*to rebuild and alter of a former dwellinghouse, not in accordance with the approved plans and drawings*' is somewhat self-serving, to illustrate their view that there have been egregious variations from the appellants' approved scheme that render it unacceptable. While this does not in itself constitute unreasonable behaviour, it adds weight to my view that the Council have not made a fair assessment of the scheme as built, and its overall conformity with the planning permission.
9. In enforcement cases the government's Planning Practice Guidance on awards of costs in planning appeals states that local planning authorities must carry out adequate prior investigation and 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 accurate¹. In my opinion the Council did not carry out an adequate investigation prior to issuing the enforcement notice or engage in a proper discussion with the appellants. Had such an investigation been done I consider it probable this enforcement notice would not have been issued, and no appeal would have been necessary.
10. 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

11. 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 Tendring District Council shall pay to Lloyd Otte and Chanelle Otte, the costs of

¹ Planning Practice Guidance paragraph 048 - Reference ID: 16-048-20140306.

the appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Tendring District 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.

Stephen Brown

INSPECTOR