



Costs Decision

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2022

**Costs application in relation to Appeal Ref: APP/N3020/C/21/3279123
Bracken House Blidworth Waye, Papplewick, Nottingham NG15 8GB**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Reece Phillips for a full award of costs against Gedling Borough Council.
 - The appeal was against an enforcement notice alleging the erection of an unauthorised building with associated hardstanding comprising steps and a patio.
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Decision

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

Reasons

2. Paragraph 030 of the Appeals section of the national 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. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal.
3. The applicant claims that the council has acted unreasonably in that it has produced no meaningful evidence to support its decision to issue the enforcement notice and has produced no analysis of the salient factual and legal issues in its Statement of Case. The Council's refusal to accept the proposed s106 agreement to alleviate its concerns about the potential use of the building as an independent dwelling also serves to demonstrate unreasonable behaviour. Furthermore, a hypothetical future use is not a relevant consideration under Class E.
4. Section 172(1) of the Act says that the local planning authority may issue a notice where it "appears to them" that there has been a breach of planning control and that it is expedient to do so having regard to the provisions of the development plan and to any other material considerations. The council considered the development unauthorised because planning permission had not been granted and that it would not be granted by virtue of Article 3, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Furthermore, the building was not considered to fall within any of the exceptions provided by the National Planning Policy Framework for development within the Green Belt and was therefore considered inappropriate by definition.

5. Based on the information available to it at the time, I consider that the council had good reason to issue the notice. Although I disagree with the Council's conclusion, I consider that its decision and underpinning reasoning were not without foundation. Whether a building is required for an incidental purpose will depend on a fact and degree assessment and planning judgement of the individual case. Furthermore, the proffered unilateral undertaking would not have been the appropriate vehicle for securing the use of a building that was considered to not benefit from a deemed consent under Article 3 of the GPDO. As I found the development to not constitute a breach of planning control, its location within the Green Belt did not fall to be considered.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

S A Hanson

INSPECTOR