

Costs Decisions

Site visit made on 22 March 2022

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

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

**Costs application in relation to Appeal Ref: APP/B5489/C/21/3281208
11 Vicarage Road, Hornchurch RM12 4AS (Land Registry Title Number
NGL128752)**

- 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 Mrs Judith Howes for a full award of costs against the Council of the London Borough of Havering.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a building with a climbing frame and raised platforms in the rear garden.
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**Costs application in relation to Appeal Ref: APP/B5480/C/21/3281207
11 Vicarage Road, Hornchurch RM12 4AS (Land Registry Title Number
NGL128752)**

- 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 Peter Howes for a full award of costs against the Council of the London Borough of Havering.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a building with a climbing frame and raised platforms in the rear garden.
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Decisions

1. Both applications for an award of costs are refused.

Reasons

2. 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.
3. In essence, the applicants claim that the Council:
 - a) Provided conflicting views to them in respect of the appeal structure, from 3 different officers;
 - b) Delayed in investigating the alleged breach of planning control and in conducting site visits;
 - c) Did not communicate with them adequately (by telephone, and did not respond to correspondence or to telephone or email messages left by their agent);
 - d) Did not properly investigate the matter before issuing the notice, and did not withdraw the notice to allow the matter to be properly investigated;
 - e) Did not take correct measurements of the structure;

- f) Gave the impression to them that there was no need to hurry in submitting a retrospective planning application and that it was more important to instruct a planning consultant to have the application submitted correctly, with no deadline being set to either them or their consultant (agent) who contacted the Council immediately on being instructed. Yet a notice was issued and served without warning on them and their lender (and with no notification to the agent);
 - g) Did not meet the 'expediency and public interest test' in the 'sudden' service of the notice before they had a chance to submit a planning application.
- 4. In respect of (a), the applicants have not been sufficiently specific as to the conflicting views provided by the Council. The letters sent by the Council on 16 October 2020, 26 January 2021 and 22 April 2021 all appear consistent, and are in turn consistent with the email of 6 July 2021 from the planning enforcement officer.
- 5. To the extent that it is relevant how quickly the Council addressed the applicants' unlawful development, given that the applicants have said that the first complaint about the appeal structure was made on 16 September 2020, I do not find in respect of (b) - and within the context of the above string of correspondence - that there was any unreasonable delay by the Council in investigating the alleged breach of planning control (whilst also being mindful that the pandemic caused inevitable delays and restrictions in the carrying out of site visits by local planning authorities).
- 6. The extensive correspondence on the issue over a lengthy period, notwithstanding what the applicants have said as regards (c), persuades me that the level of communication was not below what was reasonable. Further, the chains of email correspondence sent by the applicants do not demonstrate that the Council failed to adequately respond in a timely fashion both before and after the issue of the notice.
- 7. There is nothing I have seen, in respect to (d) and (e), to cause me to find that the breach of planning control was not properly investigated and while I note differences between the parties as to the precise dimensions of the appeal structure, these disputes as to fact do not constitute unreasonable behaviour.
- 8. As regards (f) and (g), I would point the applicants to the correspondence back to October 2020 requesting an application be made for planning consent for the development - but with the important rider that it is not within my jurisdiction to address and/or determine whether it was expedient for the Council to issue the notice when it did (or indeed at all), since case law¹ has confirmed that such challenges must be pursued by way of judicial review.
- 9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in respect of either application.

Andrew Walker

INSPECTOR

¹ Britannia Assets v SSCLG & Medway Council [2011] EWHC 1908 (Admin)