
Costs Decisions

Site visit made on 11 April 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Costs applications in relation to Appeal Refs: APP/R5510/C/20/3260467 & APP/R5510/C/20/3260468

Land at 17 Woodgate Crescent, Northwood HA6 3RB

- 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 Mr M Shah and Mrs M Shah for a full award of costs against the Council of the London Borough of Hillingdon.
 - The appeals were against an enforcement notice alleging the erection of Outbuilding A and Outbuilding B.
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Decisions

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

Reasons

2. The 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.
3. The Appellants submit that the Council failed to carry out adequate prior investigation that justified enforcement action. It did not consider that there might be a fallback position with more harmful planning consequences and did not consider the expediency of taking enforcement action.
4. PPG advises that a local planning authority might be at risk of an award of costs on procedural matters in an enforcement appeal if they do not carry out adequate prior investigation and 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 accurate.¹
5. The outbuildings were constructed in 2018, and it is clear from the local planning authority's evidence that a site inspection was carried out at that time by the Council and photographic evidence taken. The Appellants then submitted an application for a certificate of lawful development (S191(1) of the 1990 Act) to establish whether the two outbuildings that had been erected in the back garden were lawful. The application was refused by the local planning authority and dismissed on appeal on 23 June 2020.² The enforcement notice in relation to these two outbuildings was issued on 26 August 2020.

¹ Paragraph: 048 Reference ID: 16-048-20140306

² APP/R5510/X/19/3232789.

6. I appreciate that since the appeal was lost the Appellants decided to utilise the outbuildings for a different purpose than when first constructed. However, it can be seen from my decision on these appeals that the Town and Country Planning Permitted Development (England) Order 1990 does not grant retrospective planning permission. Thus, although the use of the buildings may well have been incidental to the enjoyment of the dwellinghouse when the enforcement notice was issued, the buildings remained unlawful. It was not therefore necessary for the Council to undertake further visits prior to issuing the notice. Furthermore, the reasons for issuing the notice did not solely relate to use but included reasons relating to their physical impact.
7. It is not the job of the local planning authority to identify possible alternative/fallback scenarios, unless they are put before them. In this case there were no such proposals before them when the notice was served, and appeal lodged. I understand that the Appellants feel that the Council did not engage sufficiently with them or proactively consider ways in which the matters in dispute could have been resolved. However, it is clear from the Council's reasons for issuing the notice that they believed the unauthorised development caused material harm to interests of acknowledged importance and was therefore unacceptable. In those circumstances, it is difficult to see how they could have responded differently.
8. The reasons for serving the notice were set out clearly in the enforcement notice and the breach was accurately recorded. In addition, the Council identified which policies in the Development Plan they considered the development to conflict with. Furthermore, they supported their reasons for issuing the notice with a statement which considered each ground of appeal. It can be seen from my decision that I did not agree with the Council's decision and found that any harm could be mitigated by conditions. However, that decision was a matter of professional judgement, and I am satisfied for the reasons set out above, that the Council adequately substantiated its reasons for issuing the notice and the appeal could not have been avoided.
9. I therefore conclude unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated and an award of costs is therefore not justified in either case.

Elizabeth Pleasant

INSPECTOR