
Costs Decisions

Site visit made on 19 May 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Costs application A in relation to Appeal Ref: APP/B2355/C/21/3289941 272 Helmshore Road, Haslingden, Rossendale BB4 4DJ

- 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 Rossendale Borough Council for a full award of costs against Mr Paul Horridge.
 - The appeal was against an enforcement notice alleging the erection of a two storey and single storey rear extension.
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Costs application B in relation to Appeal Ref: APP/B2355/C/21/3289941 272 Helmshore Road, Haslingden, Rossendale BB4 4DJ

- 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 Paul Horridge for a full award of costs against Rossendale Borough Council.
 - The appeal was against an enforcement notice alleging the erection of a two storey and single storey rear extension.
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Costs application C in relation to Appeal Ref: APP/B2355/C/21/3289942 272 Helmshore Road, Haslingden, Rossendale BB4 4DJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rossendale Borough Council for a full award of costs against Mr Paul Horridge.
 - The appeal was against the refusal of planning permission for an extension to the rear of property, part stone/part timber cladding.
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Costs application D in relation to Appeal Ref: APP/B2355/C/21/3289942 272 Helmshore Road, Haslingden, Rossendale BB4 4DJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Paul Horridge for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of planning permission for an extension to the rear of property, part stone/part timber cladding.
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Decisions

1. The 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. "Unreasonable" is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

Costs applications A and C

3. These are made by the Council against the appellant on the basis that the appellant behaved unreasonably because the Council alerted him to the need to check whether planning permission would be required for the first storey extension to the rear of the property. The evidence submitted in support of this is a hand-written note by a Building Control Officer dated 23 February 2021 which includes the words "reiterated need to check for PP". The Council goes on to claim that despite this advice, the appellant continued to develop the extension which has led to unnecessary and wasted expense of all proceedings in relation to the enforcement investigation and determination of the planning application and subsequent appeal. In response, the appellant has stated that no such conversation took place and nothing was ever sent in writing.
4. The level of evidence in support of the cost's case made by the Council is weak and there is no indication of the details of any oral advice that may have been given, including whether specific guidance, advice and contact details were provided or whether it was merely a passing comment that planning permission may be required. In any case, whether or not the appellant checked with the planning department could not be regarded as unreasonable behaviour in the wider context of the appeals that have been made. Since the costs regime is restricted to the appeal process, I do not find that the appellant has behaved unreasonably in that context.
5. Although I have not found in favour of the appellant under grounds (a), (c) and (f), nor with regard to the appeal against the refusal of planning permission, it is not unreasonable that he has pursued appeals. It is clear that there is a difference of opinion between the Council and the appellant but having a different opinion does not constitute unreasonable behaviour.

Costs applications B and D

6. Costs applications B and D are made by the appellant on the basis that the drafting of the requirements of the enforcement notice and the reason for refusal of the planning application are unreasonable and have led to the appellant to have incurred costs which should have been avoided.
7. The Council carried out enforcement action as a result of unauthorised development being carried out by the appellant at 272 Helmshore Road, Haslingden. Subsequently, planning permission was refused for a retrospective application for the erection of a two storey extension. It is clear that there is

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

disagreement between the main parties with respect to the interpretation of permitted development rights under Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 and associated technical guidance. However, the Council was entitled to issue an enforcement notice against the breach of planning control alleged; namely without planning permission the erection of a two storey and single storey extension because that is what they alleged to have happened. In a similar way the appellant is entitled to challenge that allegation on appeal. I find no reason why the Council has behaved unreasonably in this respect.

8. With respect to the planning application it is important to note that the description of the proposed works set out on the planning application form dated 9 September 2021 is "extension to rear of property, part stone / part timber cladding". The drawings submitted (Nos GH_001/01 Revision P1 dated September 2021 and GH_001/02 Revision P1 dated September 2021) show existing and proposed elevations and floor plans. The proposed plans show a two storey extension to the rear of the property and that is the proposed development which has been determined by the Council. I do not find this to be unreasonable behaviour nor do I consider the Council's determination of the planning application to be flawed or demonstrate unreasonable behaviour resulting in unnecessary costs being incurred by the appellant.

Conclusions

9. I therefore find that with respect to all applications, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a full award of costs are not justified.

A A Phillips

INSPECTOR