



Costs Decision

Site visit made on 31 May 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2022

Costs application in relation to Appeal Ref: APP/N1730/C/22/3290512 35A Basingbourne Road, Fleet, GU52 6TG

- 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 the Hart District Council for a full award of costs against Mr Neil Weston.
 - The application is in connection with an appeal against an enforcement notice relating to the construction of a single storey building.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. The costs application and arguments advanced on behalf of the applicant Council and the respondent Mr Weston were set out in detail in written submissions. As such, I need not repeat them here.
3. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably in the appeal process, **and** that unreasonable behaviour resulted in the other party incurring unnecessary or wasted expense. The PPG lists examples of behaviour whereby a procedural or substantive award of costs may be justified. However, the list of examples should not be regarded as exhaustive.

Appeal on ground (c)

4. In enforcement appeals, the onus of proof on matters of fact is on the appellant, tested on the balance of probability. Hence, it was for the appellant to demonstrate that the construction of the appeal building was not a breach of planning control.
5. The appellant's evidence was very limited, relying on an assertion that the appeal building was constructed on the incorporated foundations of a former double garage² and that it was not materially larger.
6. However, as set out in the related appeal Decision, demolishing a double garage and replacing it with a new residential annexe building constitutes the erection of a new building, and not the *maintenance, improvement or other*

¹ Paragraph 030 ref 16-030-20140306

² Appellant's letter 11 January 2022; Appeal Form ground (f)(2); and Appellant Statement of Case 1.34

alteration of an existing building. Moreover, his evidence was irreconcilable with the Council's photographic and documentary evidence which clearly evidenced the construction of a new and larger appeal building. It should have been obvious to him that his case on ground (c) was not a coherent one based on reliable evidence.

7. As such, I find that lodging and continuing with this ground of appeal amounts to unreasonable behaviour which has resulted in wasted expense for the Council.

Grounds (f) and (g)

8. For reasons set out in detail in the related appeal Decision these two grounds of appeal failed.
9. The appellant's evidence for ground (f) was largely ineffective in specifically addressing why the requirements were excessive for the purpose of remedying the breach of planning control. However, his evidence was not entirely irrelevant or without any merit whatsoever. As such, it was not so inadequate that it amounted to unreasonable behaviour.
10. Although in ground (g) no specific alternative period of time was suggested, it was nonetheless open for me to vary the time limits if I considered it more reasonable to do so. Hence, while there was little convincing evidence as to why more time should be allowed to comply with the particular notice requirements, I find that his appeal on this ground cannot be said to amount to unreasonable behaviour.

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 Mr Neil Weston shall pay to the Hart District Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of the appeal on ground (c); such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mr Neil Weston, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Thomas Shields

INSPECTOR