

Costs Decision

Site visit made on 13 July 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 August 2022

**Costs application in relation to Appeal Ref: APP/Z3825/C/21/3286217
Land at 17 Bramber Avenue, Storrington, Pulborough, West Sussex, RH20
4HZ**

- 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 Ms Sharon Goldring for an award of costs against Horsham District Council.
 - The appeal was against an enforcement notice dated 29 October 2021 alleging without planning permission the erection of a dormer and associated windows and doors in the dormer as outlined in blue on the plan attached to the notice.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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. The appeal was lodged on ground (c) that the matters alleged do not constitute a breach of planning control. Ground (f) was also pleaded but I did not consider this as I allowed the appeal on ground (c).
4. The Guidance gives examples of when a Council may be at risk of an award of costs being made against them. One example is where they fail to 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.
5. The Appellant argues that the Council has acted unreasonably in relying on information from the period June 2020 – March 2021 whilst the dormer was under construction and that no attempt was made to investigate the facts at the time of completion and prior to issue of the notice.
6. The Council's response is that at the time of their last site inspection on 4 March 2021 the development was substantially complete and therefore there

was no need for subsequent visits before issuing the notice on 29 October 2021.

7. In my substantive decision I identify that the Council's evidence is not contemporaneous with the issue of the notice. The site visit in March 2021 related to the determination of an application for a certificate of lawful use (CLU) and the period between this and the issue of the Notice in October was significant. It was not reasonable for the Council to assume that no change had been made to the dormer in that time. I accept that there was no appeal against the refusal of the certificate but it does not follow that there was no need for adequate prior investigation.
8. I consider that the failure of the Council to make a site inspection before determining to take enforcement action was unreasonable behaviour within the meaning of the Guidance.
9. The Guidance says that a Council is at risk of an award of costs being made against them if (amongst other matters) a lack of cooperation with the parties is demonstrated or there is a failure to review their case promptly following the lodging of an appeal as part of sensible ongoing case management.
10. The Appellant argues that through her agent she offered to continue dialogue to resolve matters but that the Council's response was one of refusal to cooperate or to review the case.
11. The Council's response is that as the dormer is not permitted development it cannot be retrospectively altered to be permitted development and as such the only resolution was full compliance with the enforcement notice.
12. The power to issue an enforcement notice is discretionary and not an automatic consequence of a CLU refusal. Enforcement action should not be punitive. The email correspondence before me invites the Council to review its case but this was declined. The Council's failure to discuss next steps and automatically proceed to enforcement action was unreasonable, particularly as their own evidence is based on a marginal difference being more likely than not. The refusal of a CLU and the absence of appeal does not of itself make enforcement action expedient. There is no evidence before me that the Council turned its mind to whether enforcement action in this case was expedient. The Council's failure to review the case was unreasonable behaviour within the meaning of the Guidance.
13. The Guidance says that a Council is at risk of an award of costs being made against them if (amongst other matters) they provide information that is shown to be manifestly inaccurate or untrue.
14. The Appellant claims that the Council's case has not provided evidence to support claims that relevant conditions of permitted development are not met. The Council deny this pointing to the detailed explanation of permitted development in their statement of case in the enforcement notice appeal.

15. The Council has set out its reasoning in its statement of case. Whilst I do not support that reasoning in my substantive decision that does not of itself make the Council's position unreasonable.
16. I consider that the Council provided its statement of case in good faith and did not provide information that was manifestly inaccurate or untrue. Their behaviour in this respect was not unreasonable.
17. The Guidance says that a Council is at risk of an award of costs being made against them if (amongst other matters) they deliberately conceal relevant evidence at appeal.
18. The Appellant claims that she has been denied evidence on which the Council relies namely site inspection notes, photographs and other material in the Council's enforcement investigation file.
19. The Council's response is that whilst the Council's planning compliance file has not been shared with the Appellant there is nothing on that file which has not been evidenced in its statement of case.
20. I have no reason to doubt the Council or question their motive. I consider that the Council has not deliberately concealed relevant evidence. Its behaviour in this respect is not unreasonable.
21. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated. If the Council had undertaken appropriate prior investigation and reviewed its decision to issue an enforcement notice following submissions from the Appellant it might have avoided the need for an appeal. I conclude that the full award of costs sought by Ms Sharon Goldring against Horsham District Council is justified. The application should be allowed.

Costs Order

22. 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 Horsham District Council shall pay to Ms Sharon Goldring, the costs of the appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to Horsham District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S. Prail

INSPECTOR