

Costs Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 16 September 2022

Costs application in relation to Appeal Ref: APP/E2734/C/22/3294021 Braithwaite Barn, Beckwith, Harrogate HG3 1QQ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Harrogate Borough Council (the LPA) against Mr David Hayton (the Appellant).
 - The appeal was in relation to an enforcement notice regarding a stone and timber glazed structure (garden room).
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Decision

1. The application for an award of costs is refused.
2. Planning Practice Guidance (PPG) states that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary loss and expense in the appeal process.

The Council's application for costs

3. The application is for a full award of costs. Reference is made to the appellant's failure to accept the previous appeal decision (APP/E2734/D/20/3250001). That appeal was dismissed on the basis that the siting and appearance of the stone and timber glazed structure was incongruous. The Inspector's conclusion was that *'the development results in an adverse effect on the character and appearance of the area, including a limited visual impact on the wider landscape character.'*
4. It is contended that this present appeal has been poorly made. It is indicated that it requires the overlooking of old ground and a reassessment of the decision about the inappropriate stone and timber glazed structure. This has already been decided upon and the appeal against the Enforcement Notice was not considered to have been necessary.
5. It is further argued that the grounds of appeal under (f) are vague and inconclusive. It is stressed that they do not precisely set out the *'lesser steps'* to be taken. Rather, they propose the creation of a landscaping scheme and amendments to the form of the building. It is contended that this screening scheme and potential alterations to the building are essentially a *'backdoor ground (a) appeal'* which was neither applied for, nor paid for.
6. It is argued that the Appeal on ground (f) has wasted the Council's time and effort in defending the appeal. The ground (f) appeal has resulted in numerous assessments of landscaping proposals which were not required and again wasted the Council's time and effort. In summary it is contended that the Appellant's

unreasonable behaviour in this appeal process has led to unnecessary loss and expense for the Council.

The response to the application for costs by Mr David Hayton

7. It is not accepted that in making the appeal the Appellant has acted unreasonably. It is stressed that the previous S78 appeal identified the harm caused by the appeal building in this location and that it is considered that the harm would be overcome if the lesser steps as identified are carried out.

8. It is indicated that the Appellant has spent a considerable amount of money to construct the outbuilding and that it is not far away from the outbuilding which was approved by the planning permission (APP/E2734/D/20/3250001).

9. The appeal is also not unreasonable because an appeal has also been made on ground (g) in the event that the '*lesser steps*' arguments fail. It is stressed that in any event the Appellant will implement the approved planning application for the outbuilding.

10. It is not accepted that the appeal is a '*back-door ground (a) appeal*'. The '*lesser steps*' appeal as set out on ground (f) is considered to overcome the harm identified by the previous Inspector. It is not accepted, therefore, that the Appellant behaved unreasonably or that the behaviour caused the Council unnecessary expense in the appeal process.

My assessment

11. To a certain extent I can understand the Council's contention that rather than being '*lesser steps*', the proposed '*mitigation measures*' could to a certain extent be considered to be another attempt to secure the retention of the '*garden room*' in this inappropriate location.

12. However, the appellant was entitled to appeal the notice and did so on grounds (f) and (g). Although the Council refer to the appeal on ground (f) being a '*reassessment of the decision about the inappropriate stone and timber glazed structure*', arguments were put forward on behalf of the appellant that the requirements were excessive and that the suggested '*mitigation measures*' could overcome the visual harm caused by the structure. Rather than being a reassessment of the structure in itself, what was required was an assessment as to whether or not the proposed mitigation measures would overcome the objections.

13. These measures basically constituted landscaping proposals which were considered could overcome the harm caused by the positioning of the structure, thereby avoiding its removal. It is the case that, in some instances planning permission can be granted because landscaping conditions can overcome harm relating to visual harm of a development. In this case, however, and for the same reasons set out in the Council's appeal statement, I have concluded that such measures would not overcome the harm caused by the inappropriate structure.

14. I agree with the Council that the appellant's ground (f) case was weak. But that does not mean that it was so unreasonable to suggest that an appeal should not have been made against the enforcement notice in the first place. It was considered, on behalf of the appellant, that the '*mitigation measures*' were sufficient to overcome the harm caused by the structure. If I had agreed with that contention then they would have constituted lesser steps than those set out in the notice.

15. Furthermore the appellant was entitled to also appeal on ground (g) and again although not successful, I do not consider that it was so unreasonable so as to result

in unnecessary loss and expense for the Council in the appeal process. Once the notice had been served the appellant was entitled to appeal and it was inevitable that the appeal would have to run its course.

16. In conclusion I do not consider that the appellant's actions in appealing the enforcement notice led to unnecessary loss and expense in the appeal process for the Council. It follows that I do not consider that the application for costs against the appellant should succeed.

Formal Decision

17. The application for costs is refused.

Anthony J Wharton

Inspector