



Costs Decision

Site visit made on 16 May 2023

by P White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Costs application in relation to Appeal Ref: APP/J1535/C/22/3291574 Abbess House, Abbess Roding, Ongar CM5 0PA

- 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 Nigel Barnes for a full award of costs against Epping Forest District Council.
 - The appeal was against an enforcement notice alleging without planning permission the erection of a single storey front and two single storey side extensions on a detached garage building.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.

The appellant's case:

3. In summary, the applicant's case is that the Council added an informative onto the refused planning application which preceded the enforcement notice. In it the Council offered to provide pre-application advice in respect of any future application for a revised development. But only 13 days later, before the applicant had the opportunity to do so, the enforcement notice was issued. The applicant had already ceased works, and 5 days after the enforcement notice was issued (3 weeks after the refusal) had employed a new architect to prepare a sketch design for discussion, which was submitted as a pre-application enquiry 6 weeks after the refusal.
4. In essence, the appellant considers the appeal could have been avoided if the Council had provided sufficient time for engagement with the appellant. But, as a result of the Council's quick issue of the enforcement notice, the appellant incurred unnecessary costs in preparation and submission of the appeal statement, and the fees payable in relation to the ground (a) appeal and deemed planning application.

Consideration of the issues:

5. The planning application was an opportunity for the Council to consider the development proposed, which was constructed in part. On the basis of the information before me, the Council's Heritage and Conservation officer was

clear that the development proposed would harm the character of the outbuilding, the setting of the locally listed building, and the significance of the conservation area. These comments were accepted by the Council, and included in their report recommending refusal of the planning application. At the same time, the Heritage and Conservation officer also advised that, "if this building were to be extended the natural way to do this would be in a linear form, matching its roof profile". The Council clearly considered that the linear extension of the building was the only way to extend it in a manner which respected the building and local heritage assets. As a result, the works carried out were not considered to be capable of being made acceptable, and were not expected to form part of any pre-application discussions.

6. It is also clear that the expectations of the appellant were raised as a result of the Council's informative. Particularly considering the scope for finding a solution which may incorporate some, or all, of the works carried out. The appellant's sketch drawing, prepared by a new architect appointed after issue of the enforcement notice, demonstrates that, but was not available to the Council prior to issue of the enforcement notice.
7. It is therefore unfortunate that an opportunity was not afforded to the appellant to explore alternative options prior to the issue of the enforcement notice. Nevertheless, it was not unreasonable for the Council to issue an enforcement notice for works carried out without planning permission, and in relation to which planning permission had been refused.
8. Although I note engagement between the parties may have resulted in a variation considered to be appropriate by the Council, there is nothing before me which suggests that would be the case. In any event, the revised proposals were not put forward until after the enforcement notice was issued.

Conclusion:

9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Peter White

INSPECTOR