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## Costs Decision

Site visit made on 6 June 2023

**by L Douglas BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>TH</sup> JULY 2023**

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### **Costs application in relation to Appeal Ref: APP/T1410/C/22/3297649 Land at 2 Allfrey Road, Eastbourne BN22 8TL**

- 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 Ahamed Benyahya for a full award of costs against Eastbourne Borough Council.
  - The appeal was against an enforcement notice alleging the unauthorised erection of boundary treatment to first floor flat roof to create roof terrace for amenity purposes
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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 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 appellant has claimed that the Council's appeal submissions relating to the use of the flat roof of the appeal building's single storey rear extension and a query as to whether it had made an error in the enforcement notice demonstrate that the Council does not understand the purpose of the enforcement notice. This, it is claimed, constitutes unreasonable behaviour which has caused the appellant to unnecessary or wasted expense in the appeal process.
4. The Council has not addressed the appellant's specific claims alleging unreasonable behaviour, but it has instead referred to the warning letters issued to the appellant prior to issuing the enforcement notice. As the appellant was aware of the breach of planning control and the Council's requests for it to be remedied, it is claimed that the Council's decision to issue the enforcement notice did not constitute unreasonable behaviour.
5. The appellant's claims relating to unreasonable behaviour focus on errors in the Council's appeal questionnaire. Obvious errors were made in respect of Questions 6c<sup>1</sup> and 9<sup>2</sup> of Part 3 of that questionnaire. As basic errors, these should not have been made by the Council, and it was unreasonable for it to have made them within an important appeal document.

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<sup>1</sup> The Council answered 'yes', '21 sq metre(s)' to the question: 'Does the alleged breach create any floor space? If YES, please state the amount of gross floor space created, in square metres'

<sup>2</sup> The Council answered 'yes' to the question: 'Does the enforcement notice relate to the erection/change of use of a building which is a single private dwellinghouse, as defined in Regulation 2(1) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012?'

6. However, those clear errors were made after the submission of the appellant's statement of case and do not indicate to me that the Council, as the local planning authority, was unclear about the purpose of the enforcement notice. Furthermore, as obvious errors, it has not been demonstrated that these have resulted in the appellant incurring any wasted or unnecessary expense in the appeal process. It was the appellant's decision to raise and clarify these issues in their final comments, which were not determinative factors in the ground (d) appeal.
7. The enforcement notice does not specifically relate to the use of the flat roof. It is clear that the Council has concerns with regard to the use of the flat roof as an amenity space and compliance with the enforcement notice's requirements would go some way towards addressing those concerns. This is because removal of the boundary treatment to the first floor flat roof would make that area less suitable for safe and regular use as an amenity space, even if such a use would not be in breach of planning control. It was not unreasonable for the Council's appeal submissions to refer to those concerns.

### **Conclusion**

8. Unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

*L Douglas*

INSPECTOR