



Costs Decision

Site visit made on 22 June 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Costs application in relation to Appeal Ref: APP/W2465/C/22/3300478 Land at 203 Narborough Road, Leicester LE3 0PE

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Kian Parmar of ASKGD Limited for a full award of costs against Leicester City Council.
 - The appeal was against an enforcement notice alleging the failure to comply with condition imposed on a planning permission ref 20141807 granted on 5 March 2015.
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Decision

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

Reasons

2. Paragraph 030 of 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.
3. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice. Unreasonable behaviour can relate to procedural matters or substantive issues relating to the merits of the appeal.
4. The applicant argues that the Council has issued a flawed enforcement notice which is reliant on an inaccurate schedule and drawings, and also that they have failed to carry out a thorough investigation prior to the issuing of the notice. The PPG emphasises in relation to enforcement action that local planning authorities must carry out adequate prior investigation and will be at risk of an award of costs if 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 or ensure that it was accurate. Effective enforcement action relies on accurate information about an alleged breach of planning control.
5. As detailed in my appeal decision, there are significant differences between the approved plans of permission 20141807 and what was actually built at the site. The Council argue that these differences can be considered non-material amendments. However, it is clear given the extent of the differences identified, along with some of the pre-commencement conditions of permission 20141807 not being discharged, that the planning permission was not implemented. The Council had not carried out adequate prior investigation and have therefore acted unreasonably in this regard.

6. It is claimed that the Council has failed to engage with the applicant as well as failing to meet appeal deadlines. The Council explain that they have been investigating the enforcement matter for some time which includes the serving of a Planning Contravention Notice, dealing with a discharge of conditions application and holding a site meeting. The Council also state that they consider it was unnecessary to discuss any matters further once the appeal was submitted. The applicant had raised concerns over the accuracy of the notice in their statement of case and had the Council engaged and co-operated with the applicant, this could have led to the notice being withdrawn at an early stage of the appeal. There has been a lack of co-operation from the Council, and they have behaved unreasonably in this regard.
7. The Council also accept that appeal deadlines were missed in relation to the submission of their statement of case, indicating increased workload as a reason but consider it is not unreasonable behaviour as no additional costs were incurred by the applicant. Failure to adhere to deadlines is unreasonable behaviour however, in this circumstance, this matter itself may not have led to substantial costs being incurred by the applicant.
8. Notwithstanding the above point, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Leicester City Council shall pay to Mr Kian Parmar of ASKKD Limited the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to the 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.

Chris Baxter

INSPECTOR