
Costs Decision

Site visit made on 6 December 2023

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Costs application in relation to Appeal Ref: APP/B1415/C/22/3307588 Land known as 130 Bohemia Road, St Leonards-on-Sea TN37 6RP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr K Davies for an award of costs against Hastings Borough Council.
 - The appeal was against the Council's decision to issue an enforcement notice against the erection of a roof extension.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The guidance indicates that a party could be at risk of an award of costs if it fails to produce evidence in a timely manner.
3. The applicant's grievance relates to the delay in the planning process and, given the current planning position, he has not been able to complete the internal works to the building's top floor. He also considers that the Council's decision to issue the enforcement notice was unreasonable and, as such, the appeal was avoidable and unnecessary.
4. In response the Council makes the point that the scheme put forward in the application (ref HS/FA/22/00039), approved in November 2022, was received at the beginning of 2022 yet did not include the roof extension which was in situ at the time.
5. The Council is correct here in that the roof extension at issue had been in place since at least the spring of 2018 and should have formed part of the above application. However, I would imagine that this element was omitted as the applicant doubted it would be acceptable, thereby being prejudicial to the application as a whole.
6. Given the Council's decision to issue an enforcement notice only a few weeks prior to the planning permission for the other extensions and alterations the applicant has a point but that does not alter the fact that the Council found the roof extension as unacceptable. This is a matter of the considered planning merits and impacts and, irrespective of my subsequent conclusions, the Council

was entitled to find against this development and reach the decision it did. An appeal would have still ensued.

7. The applicant cannot therefore reasonably blame the Council for his approach taken to isolate the roof extension from all the other elements of the development undertaken, be them retrospective or actual proposals.
8. Finally, in response to the applicant's costs claim, the Council says that the planning permission granted can only be implemented in full if the roof structure is removed. I am unclear whether this is the case but, nonetheless, such matters go beyond my remit and must remain a matter between the main parties as an amendment to the 2022 permission may prove necessary, either under s96A or s173 of the 1990 Act, and would involve a new application.
9. For the reasons given above, I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.
10. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR