



Costs Decision

Site visit made on 26 February 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Costs application in relation to Appeal Ref: APP/D3830/C/22/3311320 Land at 18 The Grange, Hurstpierpoint, Hassocks, West Sussex, BN6 9FD

- 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 Ms Yvonne Tyler for a full award of costs against Mid Sussex District Council.
 - The appeal was against an enforcement notice alleging the construction and installation of a dormer window.
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Decision

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

Reasons

2. 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 thrust of the applicant's case is that the Council should have carried out adequate prior investigation as it is considered the development the subject of the notice is immune from enforcement action. If the matter had been discussed in more detail prior to issuing the notice, it would have avoided the need for it to be issued.
4. As a consequence, the applicant has incurred unnecessary costs in respect of this appeal. The applicant also sought a lawful development certificate from the Council, but this is to be refused for what is considered to be a technicality.
5. It was therefore unreasonable of the Council to issue a notice. They also have evidence the development is lawful and have accepted they do not have evidence to counter the documentary evidence of the applicant. It was therefore within their power to withdraw the notice once it becomes clear to them that they were out of time. The Council have however declined to do so.
6. The Council then highlight that it has put forward its position and evidence for dismissal of the appeal, noting discrepancies in the evidence. The Council has also undertaken significant investigation into this matter. If the ground (d) appeal is allowed, this would not be due to insufficient or undiligent investigation.
7. A previous certificate of lawfulness was refused because it did not pass the test outlined in s191 of the Act. A further certificate remains under determination

subject to the outcome of this appeal, but it does not provide additional evidence.

8. The notice was therefore issued after considerable investigation and negotiation with the applicant. The Council has not acted unreasonably in this matter in either a procedural or substantive way.
9. In respect of my assessment, it is the case that for the purposes of issuing a notice it only has to appear to the Council that there has been a breach of planning control. This was actually plainly the case. The onus is then firmly on the applicant to demonstrate their case on the balance of probabilities that, in this instance, it was too late to take enforcement action.
10. Whilst the applicant may have sought a lawful development certificate/s, those are not before me, whether refused on a technicality or not. Moreover, in respect of the ground (d) appeal that is before me, whilst I accepted that the evidence of the applicant demonstrated on the balance of probabilities that it was too late to take enforcement action, the Council constructed relevant points and brought matters to my attention to challenge the evidence of the applicant.
11. The Council therefore maintained its position that the development was not immune from enforcement action, as they were entitled to do. It was therefore not unreasonable to issue a notice or decline to withdraw it in light of the matters they brought to my attention. Given this, I am also not persuaded that there was inadequate prior investigation.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR