



Costs Decision

Site visit made on 11 September 2024

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 September 2024

Costs application in relation to Appeal Ref: APP/Z3635/C/23/3331038 99 Marlborough Road, Ashford TW15 3PW

- 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 Avtar Singh Bhamra for a full award of costs against Spelthorne Borough Council.
 - The appeal was against an enforcement notice alleging the erection of a two-storey side extension, new front porch and garage conversion.
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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.
3. The appellant argues that the enforcement notice contains inaccuracies, which includes a contradiction between the reasons for issuing the notice and the steps required for compliance. It is further claimed that the Council has been obstructive and has failed to engage with the appellant, and that it commenced enforcement action prematurely. Moreover, it is argued that advice from a structural engineer has been disregarded.
4. I have accepted in my Decision that the notice contains a contradiction between the reasons for issue, and the steps required. The development was carried out pursuant to a planning permission, which was for the erection of a two-storey side extension and the conversion of the garage into a habitable room, Ref: 17/00435/HOU, but it deviated from the approved plans. The scheme included a front porch, which also formed part of the allegation. The Council considered the changes to be material and the allegation is development without planning permission.
5. It seems that the Council intended to replicate the allegation in its entirety in the reasons, but the two-storey side extension was omitted. However, it is apparent from the notice as a whole which part of the development is targeted since the steps relate only to the extension. This acknowledges that the porch and garage conversion are not required to be removed or altered. The reference to them being within the buffer zone is inaccurate as it is the extension that is sited within 0.9 metres of the river bank. Nonetheless, I am satisfied that it is possible to establish from the notice in what respect it was alleged the land had been developed without the required permission and what must be done to remedy the alleged breach.

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6. I note that the Council advised the appellant (email dated 13 January 2023) that it may not be necessary to remove the extension in its entirety, which is required by the notice. The statutory purpose behind the notice could be achieved through an additional requirement to give the option of altering the development to comply with the planning permission (Ref 22/00448/HOU) and all its terms and conditions. The Council omitted to include that option in the notice, but this is not unreasonable behaviour as the notice could be varied subject to the outcome of the ground (f) appeal.
 7. There is no evidence before me that the Council has been obstructive. It has engaged with the appellant and the Environment Agency throughout the process. A decision was issued on planning application 23/00085/RVC prior to the receipt of further comments from a consultee but the Environment Agency's position was already clear. The Council chose to issue the decision rather than delay matters. Ultimately the Environment Agency supported the Council's decision and there is no suggestion that the outcome would have been different had the Council delayed the decision until comments had been received.
 8. The planning officer's report refers to the contents of the engineer's report. However, it was concluded that the removal of all the concrete material within the watercourse and the 0.9 metre buffer zone would be required, in accordance with previous advice from the Environment Agency. The officer did consider the structural engineer's comments that there would be considerable damage to the bank, but they were not accepted.
 9. The appellant also queries whether a condition attached to a previous planning permission is reasonable. However, there was no appeal against that condition, as far as I am aware, and this matter is not before me.
 10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

D Moore

Inspector