
Costs Decisions

Site visit made on 1 September 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2020

Costs application A in relation to Appeal Ref: APP/G4240/C/20/3249746 Godley Green Cottage, Godley Green, Hyde SK14 3BE

- 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 Martyn Tomlinson for a full award of costs against Tameside Metropolitan Borough Council.
 - The appeal was against an enforcement notice alleging the carrying out of building operations at the Property without the required planning permission.
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Costs application B in relation to Appeal Ref: APP/G4240/C/20/3249746 Godley Green Cottage, Godley Green, Hyde SK14 3BE

- 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 Tameside Metropolitan Borough Council for a partial award of costs against Mr Martyn Tomlinson.
 - The appeal was against an enforcement notice alleging the carrying out of building operations at the Property without the required planning permission.
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Decision

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

Reasons

3. 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. The aim of the costs process is to encourage all those involved in the appeal to behave in a reasonable way.
4. Unreasonable behaviour can be either substantive, relating to the issues arising from the merits of a case or procedural, relating to process, in nature. In addition "unreasonable" is used in its ordinary meaning as established by the courts¹ and not in the stricter law definition of "Wednesbury" unreasonable.
5. Applicants for costs will also need to demonstrate clearly how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense in order for their application to succeed.

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

Application A

6. In summary, the appellant is of the opinion that the Council has behaved unreasonably because the Council should have accepted when the appeal was first lodged that the Enforcement Notice the subject of the appeal had not been served on all the persons with an interest in the land. Also, it is argued that that the notice did not clearly identify the exact or approximate position of the outbuilding in question and that the Council failed to respond to the query as to whether Mr Martyn Leigh is duly authorised to sign enforcement notices. It is argued that the absence of a formal response or clarification on these points or the Council admitting that the Notice was flawed and withdrawing it has meant that the appellant has had to continue with his appeal and incur the associated costs.
7. However, as set out in the main decision, I have concluded that the actions of the Council with respect to serving the enforcement notice have clearly not prevented the appellant from appealing against the enforcement notice. The Council has responded to the points raised by the appellant in its Written Statement. Furthermore, I do not accept that any failure to serve the notice on all those with an interest in the land has impacted on their ability to make an appeal in respect of the enforcement notice because the property is occupied as a single dwelling. It is reasonable to expect members of that same household to discuss matters affecting them.
8. From my site observations, the description of the alleged breach and the requirements of the Notice I have been able to identify the outbuilding to which the alleged breach relates. In addition, with his detailed knowledge of the appeal property and relevant planning history, including the submission of a retrospective planning application, I do not consider it plausible for the appellant to have been confused by what the Council requires through the Notice.
9. As set out in the main decision, I am also satisfied that Martyn Leigh, Development Manager issued the enforcement notice in consultation with the Head of Legal Services using the powers delegated to him under the Council Constitution. Therefore, in that respect the Council did not behave unreasonably.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Application B

11. The Council's application for costs is made with respect to the appeal made on ground (f). The alternative steps suggested by the appellant would not remedy the breach of planning control and, in any case, the appellant has not appealed on ground (a) and therefore my decision only considers whether the measures required by the Notice exceed what is necessary to remedy the breach. Since the notice requires the removal of the unauthorised parts of the extension and the removal of the extension to the outbuilding the purpose of serving the enforcement notice is to remedy the breach of planning control rather than to remedy injury to amenity.

12. It is my understanding that Godley Garden Village is part of the Greater Manchester Spatial Framework, but no applications or decisions have yet been made by the Council. The evidence before me is insufficient to assume the appellant's property will be the subject of a Compulsory Purchase Order. Notwithstanding the fact that I have dismissed the appeal on ground (f), I recognise that this matter may be a genuine concern and the alternative measures suggested by the appellant propose means of overcoming the reasons the Council issued the enforcement notice. In that respect I do not consider it unreasonable for the appellant to have pursued an appeal on those grounds.
13. The Council has also pursued the application for costs for reasons relating to the effect of the unauthorised development on the living conditions of the occupants of a nearby residential property, but that does not form part of the appellant's arguments in relation to the appeal on ground (f). I recognise that the appellant claims that the Council undertook enforcement action to appease nearby residential occupants, but that argument is more related to expediency rather than ground (f), whether the steps required by the notice are excessive, and lesser steps would overcome the objections.
14. Although the appellant's claims that the notice is excessive are not entirely clear, he has proposed alternative lesser steps which have been rejected through the appeal process. In this regard I do not find his behaviour to have been unreasonable.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

A A Phillips

INSPECTOR