
Costs Decision

Site visit made on 28 September 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 15th November 2021

Costs application in relation to Appeal Ref: APP/M2325/D/21/3273324 135 Warton Street, Lytham, Lancashire FY8 5BH

- 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 John Acton-Reid for a full award of costs against Fylde Borough Council.
 - The appeal was against the refusal of planning permission for re-removal of front garden wall to give access to existing flagged garden for parking purposes.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 applicant considers the Council behaved unreasonably in a number of ways including by failing to advise that the removal of the wall did not require planning permission, by refusing development that did not require permission, and by suggesting alternative solutions that were unacceptable to it.
4. The applicant is frustrated that the Council was unaware of the permitted development rights. However, he did not engage with its pre-application advice service. Once the planning application was made, the Council considered the planning merits of the proposal in accordance with the development plan, taking into account material considerations. At that time, the lawfulness of removing the wall had not been established and the permitted development rights were not raised as a material consideration during the processing of the application.
5. The parties acknowledge that, as stated in the Council's self-assessment form, the creation of the vehicular access would not be permitted development. While the applicant would need to enter into a s184 agreement for the formation of the vehicle crossing, I am not aware that this would be independent of planning permission. Therefore, irrespective that part of the proposal benefits from permitted development rights, there is little to suggest that the Council behaved unreasonably in considering the scheme or by refusing it.
6. There is little substantive evidence that the alternative solution suggested by the Council would be unacceptable to it or that it could not be achieved. While

there may be other alternative solutions, there is no evidence that the Council deliberately withheld information. From what I have read, it appears that the Council sought to work proactively with the applicant to explore alternative forms of development.

7. As can be seen from my appeal decision, I took account of the material considerations, including the lawful development certificate, in reaching my decision. Even so, I found, as did the Council and the previous Inspector, that the proposal would conflict with the development plan. I dismissed the appeal accordingly. While the Council's decision will have been a disappointment to the applicant, permission was not unreasonably withheld for development that should clearly have been permitted. The appellant exercised his right of appeal and, while he has incurred expense, it does not follow that this resulted from unreasonable behaviour by the Council.
8. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated.
9. Therefore, an award of costs is not justified.

Sarah Manchester

INSPECTOR