



Costs Decision

Site visit made on 1 February 2010

by **A J Bingham** TD Dipl Arch ARIBA MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
17 February 2010

Costs application in relation to Appeal Ref: APP/Q1445/C/09/2113070 Land at 96 Waldegrave Road, Brighton, East Sussex BN1 6GG

- The application is made under the Town and Country Planning Act 1990, Sections 174, 175(7) and Schedule 6, and the Local Government Act 1972, Section 250(5).
- The application is made by Dr Juan I Baeza for a full award of costs against Brighton & Hove City Council.
- The appeal was against an enforcement notice alleging the construction of a cycle storage shed in the front garden of the appeal property.

Summary of Decision: the application fails and no award of costs is made.

The Submissions for Dr Juan I Baeza

1. It is apparent from correspondence received from the Council that at no time did it consider whether the cycle storage shed at the appeal site constituted operational development. Moreover, although an Officer of the Council visited the site to inspect the shed, no contact was made with the Applicant for the purpose of allowing the Officer entry to the site in order to inspect the subject structure or to enable the Applicant to explain the nature of its construction. Had the Council approached these matters properly, this might have led to an investigation by qualified planning staff which would have concluded that the storage shed was not subject to planning control. It was only after the Applicant sought advice from a professional practitioner to assist with the appeal that the issue of whether or not the storage shed was in breach of planning control was raised.
 2. In the light of the foregoing matters and having regard to paragraphs A12 and A18 of Part A of the Annex to Circular 03/2009 "*Costs Awards in Appeals and Other Planning Proceedings*" it is asserted that the Council has acted unreasonably, with this unreasonable behaviour having caused the Applicant to make an unnecessary appeal against the enforcement notice, with consequential waste of expense. Furthermore, the action of the Council cited above does not accord with the content of paragraph B12 of Annex B to the Circular which, with regard to enforcement action, requires planning authorities to carry out adequate prior investigation, otherwise they are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation. In the case to hand the Council gave no consideration as to whether the storage shed constituted operational development. Had it done so, it would have concluded that there was no case to investigate, thereby preventing the expense unnecessarily incurred in contesting the appeal.
 3. For these reasons, a full award of costs is justified.
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The Response by Brighton and Hove City Council

4. It is not accepted that the Council has acted unreasonably, specifically because the subject development cited in the notice constitutes operational development as defined by Section 55 of the Town and Country Planning Act 1990. The reasons for this conclusion are included in the Council's appeal statement. Of importance, the Council's action is supported by a similar case elsewhere in the city where an appeal (Ref: APP/Q1445/C/05/2004431, dated 16 February 2006) against an enforcement notice relating to a comparable development was dismissed and the notice upheld. That appeal decision supports the Council action in this case which is pursued owing to the incongruous appearance of the subject structure and its impact on local amenity and the conservation area.

Conclusions

5. Circular 03/2009 advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby cause the party applying for costs to incur unnecessary or wasted expense in the appeal process.
6. The basis for this application for costs essentially rests on two points. Firstly, that the subject of the enforcement notice does not constitute operational development, with the inference that there was no basis for the Council's action; and secondly that the council's investigation of the matter was inadequate. As mentioned above, the outcome of an appeal is not a decisive matter in relation to an application for an award of costs. However, in this case it is necessary to revisit the appeal decision as this is fundamental to the first point.
7. In my determination of the appeal, having considered the representations made by the parties and having had regard to the information gained on my site inspection, I concluded that the structure, the subject of the enforcement notice was operational development. This led me to the further conclusion that the structure constituted a breach of planning control. These conclusions align with those of the Council. It seems to me that the Council had fully considered this aspect which led to the issuing of the enforcement notice, with such consideration an essential step in the process of deciding whether to issue the notice. I reject the suggestion that at no time did the Council consider whether the storage shed was operational development. Accordingly, I do not agree that the Council's processes or actions are at fault and amount to unreasonable behaviour.
8. On the second point, the Applicant confirms that an Officer of the Council visited the site for the purpose of investigating whether or not the storage shed constituted a breach of planning control, but there is no evidence before me that this was the only visit. It is alleged that the Officer did not enter the site or make contact with the Applicant in order to inspect the interior of the shed. However, my inspection of the interior of the storage shed revealed no conclusive evidence as nothing could be seen below its floor. The means by which the structure is supported was clarified in the Appellant's appeal statement. My inspection of the interior of the storage shed provided no factual matters of substance additional to what could be seen from the public

highway. The storage shed is of basic form and construction and it is readily viewed from Waldegrave Road. While it might have been prudent for an Officer of the Council to have inspected the interior of the storage shed prior to the Council having embarked on enforcement action, from the experience of my site visit I do not accept that the Council's investigation was inadequate for that purpose or that more diligent investigation was required.

9. In the light of my conclusions on these matters I do not find that the Council has acted unreasonably such as to have caused the Applicant to have incurred unnecessary or wasted expense in appealing against the enforcement notice.

Formal decision

10. I refuse the application for an award of costs.

A J Bingham

Inspector

