



## Costs Decision

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by R H Duggan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 11/08/2023

Costs application in relation to Appeal Ref: CAS-01954-M8F5B7

Site address: Land at 132 Lon Enfys, Llansamlet, Swansea SA7 9XZ

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- The application is made under the Town and Country Planning Act 1990, sections 174, 175, 322C and Schedule 6.
  - The application is made by Melanie Ann Tucker and Michael John Tucker for a full award of costs against the City and County of Swansea Council.
  - The appeal was against an enforcement notice alleging '*without planning permission the erection of raised decking at the rear*'.
  - A site visit was made by the Inspector on 31 July 2023.
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### Decision

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

#### **The submissions for Melanie Ann Tucker and Michael John Tucker**

2. The costs application was submitted in writing on the appeal form and states that "if an Inquiry is needed then both my husband and myself will seek costs for loss of earnings for each day that we attend the event".

#### **The response by the City and County of Swansea Council.**

3. The Council held any action against the decking in abeyance during the Covid19 pandemic. The Council considered taking the enforcement action and assessed whether the unauthorised development would unacceptably affect public amenity. The Council notes that enforcement action should be commensurate with the planning impacts caused by the unauthorised development: it is usually inappropriate to take action against trivial or technical breaches of control which cause no harm to public amenity. The intention should be to remedy the effects of the unauthorised development, not to punish the person(s) carrying out the operation or use. Nor should enforcement action be taken simply to regularise development for which permission had not been sought but which is otherwise acceptable. The appellant was advised that the decking required planning permission but was unlikely to get consent.

### Reasons

4. The Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex') advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party

applying for costs to incur unnecessary or wasted expense in the appeal process. In terms of the advice as contained within the Annex, unreasonable behaviour can be procedural i.e. relating to the process, or substantive i.e. relating to issues of substance arising from the merits of an appeal or application; the Annex cites examples of such behaviour.

5. Under the ground b) appeal the appellants need to show that: "...the breach of control alleged in the enforcement notice has not occurred as a matter of fact". It was clear from the evidence that the appellants acknowledged that the decking was constructed prior to the notice being issued.
6. In a ground d) appeal the burden lies with the appellants to prove their case on the balance of probabilities "that at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters". The appellants supplied no evidence other than assertion.
7. The Council has commented on the points raised but no evidence was produced by the appellants to support the ground (d) appeal and the comments in the ground (b) appeal are considered to be flawed.
8. In the ground a) appeal that the Council has reasonably articulated its concerns in relation to the development plan and other material considerations, as set out in paragraph 3.11(a) of Section 12 Annex. The Council's statement provides specific, reasoned and objective analysis of the unauthorised development and has set out its concerns on these matters with adequate analysis of the context of the site and surroundings and the harm that would be caused to the living conditions of neighbouring residents. I agree with the Council's view that the raised decking results in an imposing form of development that is visually over-dominant with consequence adverse effects on the living conditions of neighbouring residents through loss of privacy and overlooking.

### **Conclusions**

9. The Council did not act unreasonably in deciding to issue the enforcement notice, nor did it act unreasonably in defending its decision at the appeal. No unnecessary expense was incurred by the appellants in pursuing the appeal and an award of costs is not justified. The costs application is refused.

*R Duggan*

INSPECTOR