
Costs Decision

Site visit made on 23 August 2016

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 21 September 2016

Costs application in relation to Appeal Ref: APP/Z3635/C/15/3140643 72 Charles Road, Staines TW18 1JX

- The application is made under the Town and Country Planning Act 1990 as amended, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms S Fossey for a full award of costs against Spelthorne Borough Council.
 - The appeal was against an enforcement notice alleging: 'Unauthorised use of an outbuilding in the rear garden of the dwellinghouse for primary living accommodation'.
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Formal Decision

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

The Application

2. The Applicant seeks a full award of costs in relation to the Council's perceived unreasonable behaviour in issuing an enforcement notice and defending that decision on appeal. In determining the application I have taken into account all the representations received from both main parties. It has not been made with reference to the DCLG's Planning Practice Guidance (PPG) which, amongst other things, deals with the award of costs at appeal. Nonetheless, I have had regard to the relevant advice in the PPG in determining it.

Reasoning

3. 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. My decision in that regard must be confined to matters raised by the Applicant, irrespective of my finding that the subject enforcement notice is a nullity. My reason for that finding is principally that the notice was framed erroneously as a consequence of reference to the wrong paragraph of section 171A(1) of the 1990 Act as amended, such that it is not merely beyond correction but is so flawed that, in effect, there is no notice.
4. However, this criticism has not been voiced by the Applicant, who seeks costs on other grounds. Her focus is, first and foremost, on whether condition 3 attached to planning permission ref no 14/01091/HOU¹ meets the tests of

¹ Granted by the Council on 8 September 2014 for development described in the decision notice as: 'Erection of single storey side extension and single storey rear extension. Retrospective permission for the erection of an outbuilding for use incidental to the dwellinghouse'.

conditions referred to in paragraph 206 of the National Planning Policy Framework and set out in more detail in the PPG such that it is possible for it to have effect in law.

5. It has not been necessary in determining the appeal for me to progress as far as considering the case against the enforcement notice on the ground set out in section 174(2)(c) of the 1990 Act as amended. It is under that heading that I would have addressed the question of whether condition 3 is in fact enforceable so far as it relates the matter targeted by the notice, such that non-compliance with it was possible and could amount to a breach of planning control. Nonetheless, I am able to deal with the matter succinctly in the context of this costs application.
6. The condition reads: 'That the outbuilding hereby approved be used ancillary to the domestic enjoyment of the main house and shall not contain any form of habitable accommodation. It should not be used as a separate unit of residential accommodation'. I have found in my decision on the appeal that although the term 'habitable accommodation' is not defined for planning purposes in statute, guidance or case law, there can be no question that in general parlance it encompasses bedroom accommodation.
7. In the Council's perception, the subject outbuilding included a bedroom, in relation to which the condition is worded with sufficient precision to be enforceable. It is therefore valid in law and effective at least to that extent, regardless of whether or not it is flawed in other respects. The Applicant has also sought to build a case for costs on the basis that condition 3 failed to meet tests referred to in paragraph 206 other than precision and enforceability. However, the application of these requires a judgment to be made, to varying degrees depending on the test, as to whether the condition was justified in planning terms.
8. Had the notice been framed correctly, or could have been subsequently corrected, so as to allege non-compliance with condition 3 and an appeal on ground (a) had been pursued, then consideration of its planning merits and whether it met the tests of necessity, relevance and reasonableness would have been pulled into my remit. However, there is no appeal on ground (a) in this case.
9. That being so, as long as the condition is sufficiently precise and enforceable to be effective in law to at least some extent, whether it should have been imposed in the first place on its planning merits could only be explored by an Inspector in the context of appeals under section 78 of the 1990 Act as amended². I am therefore prevented from considering the Applicant's case in this regard with a view to awarding costs.
10. The Applicant has also included in her costs application arguments as to why any planning harm arising from the alleged breach of planning control, should such a breach have occurred, is inconsequential. For example, she contends that there would be no effect on the amenity on neighbouring residents by way of noise or overlooking. However, needless to say, I cannot address these points in the absence of an appeal on ground (a).

² More specifically, appeals under section 78 against a refusal to grant planning permission for the original development without compliance with that condition (or non-determination of an application therefor) or, alternatively, directly against its imposition.

Conclusion

11. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated by the Applicant's costs application.

Alan Woolnough

INSPECTOR