The Planning Inspectorate

Costs Decisions

Site visit made on 15 November 2016

by J Flack BA Solicitor

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

Decision date: 30 November 2016

Application A: costs application in relation to Appeal Ref: APP/C3105/W/16/3153230
1-2 St John's Place, South Bar Street, Banbury OX16 5HP

- 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 Liaquat Ali and Mr Riasat Ali Sadiq for a full award of costs against Cherwell District Council.
- The appeal was against the refusal of planning permission for retention of existing extension including recladding and removal of window.

Application B: costs application in relation to Appeal Ref: APP/C3105/Y/16/3153231
1-2 St John's Place, South Bar Street, Banbury OX16 5HP

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Liaquat Ali and Mr Riasat Ali Sadiq for a full award of costs against Cherwell District Council.
- The appeal was against the refusal of listed building consent for retention of existing extension including recladding and removal of window.

Application C: costs application in relation to Appeal Ref: APP/C3105/C/16/3152930
1-2 St John's Place, South Bar Street, Banbury OX16 5HP

- 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 Liaquat Ali for a full award of costs against Cherwell District Council.
- The appeal was against an enforcement notice alleging the erection of a single storey extension and a new timber gate.

Application D: costs application in relation to Appeal Ref: APP/C3105/C/16/3155364
1-2 St John's Place, South Bar Street, Banbury OX16 5HP

- 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 Riasat Ali Sadiq for a full award of costs against Cherwell District Council.
- The appeal was against an enforcement notice alleging the erection of a single storey extension and a new timber gate.

Decisions

1. **Application A:** the application for an award of costs is refused.

2. **Application B:** the application for an award of costs is refused.

3. **Application C:** the application for an award of costs is allowed in the terms set out below.

4. **Application D:** the application for an award of costs is allowed in the terms set out below.

Preliminary matters

5. The four applications for costs were made by way of a combined application. This followed the Council's withdrawal, on 14 September 2016, of the enforcement notice to which applications C and D relate, and it follows that these appeals have not proceeded to a determination. I have been appointed to determine all four costs applications, and also the appeals to which applications A and B relate. I shall refer to the decisions on these latter appeals as my appeal decisions.

Reasons

6. The Government's Planning Practice Guidance (the 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.

7. The Guidance notes that although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded. The applicants criticise the Council for failing to engage adequately in negotiation and discussion. However, the subject matter of the appeals (the appeal extension) involves the carrying out of unauthorised works to a listed building, which is a very serious matter within the planning system. Paragraphs 186 and 187 of the National Planning Policy Framework (the Framework) states that local planning authorities should approach decision-taking in a positive way and look for solutions rather than problems. However, what that duty means in practice will depend on the circumstances and planning merits of the matter in question. It does not amount to an expectation that all proposals should be the subject of prolonged negotiation or that adequate negotiation is only to be considered achieved where the outcome is permission and consent.

8. It is apparent that the Council reached a view early on that the appeal extension was unacceptable to an extent which was incapable of sufficient mitigation by modification, and it therefore required the removal of the extension rather than inviting proposals for alterations. Nevertheless, it acted constructively by not taking enforcement action immediately, instead delaying this until it had assessed and determined the applications for listed building consent and planning permission. The applicants considered that the modifications proposed by those applications would render the extension acceptable. Notwithstanding the refusal of applications, they have maintained this position at appeal. Given the distance between the parties' positions, I do not consider that there was any realistic possibility that their differences could

have been resolved, or that negotiation would have led to the grant of planning permission and listed building consent and the consequent avoidance of the several appeals.

9. However, it is clearly also necessary to consider the merits of the Council's assessment and conclusions on the planning merits of the extension, as proposed to be modified by the applications for planning permission and listed building consent. The applicants lay great emphasis on the incorrect identification of the extension on the enforcement notice plan, suggesting that this shows that the Council have misunderstood the proposal. However, this seems to me a drafting error in the plan. Given that the extension already exists and the Council inspected it, I do not see that the Council would have been under any misapprehension about its location in assessing it. Moreover, the extent and nature of the mitigation proposed are plain from the documents accompanying the applications, and I am not persuaded that the Council ignored or failed to appreciate these in its assessment. The reasons for refusal given in the decision notices are in summary form, but this is usual and they are clear. Moreover, they are supported by the analysis in the officer reports, to which they applicants clearly had access in advance of making the appeals, and at appeal the Council has further explained its stance.

10. In any event, for the reasons I have given in my appeal decisions, I have concurred with the Council's conclusions on the merits of the application proposals. The conclusions were justified and soundly based. I therefore do not consider that the Council behaved unreasonably in refusing the applications without engaging in further negotiation, or in pursuing its position at appeal. Nor therefore have the applicants incurred unnecessary or wasted expense in relation to the appeals against the Council's refusals. It follows that Applications A and B must fail.

11. The findings above also lead me to the view that the Council's decision to pursue enforcement action did not amount to unreasonable behaviour. However, as I have noted and the Council acknowledges, the enforcement notice contained a serious drafting error. This has rendered it ineffective and is the reason why the Council withdrew the notice. However, that occurred only after the appeals against it had been made and the applicants had pointed out the error, and the Council does not seek to claim that this arose for reasons other than its own lack of care. In these circumstances, I consider that the defective drafting and consequent withdrawal of the notice amount to unreasonable behaviour.

12. However, I must also consider whether this has had the consequence that the applicants incurred unnecessary or wasted expense. The applicants both appealed against the notice on ground (a). The basis of that ground is that planning permission ought to be granted. Whilst acknowledging the differences between the unauthorised development which formed the subject matter of the enforcement notice and the proposal comprised by the applications for planning permission and listed building consent, the planning issues raised are not substantially different. Moreover, the applicants prepared a single appeal statement relating to all of the appeals: this concentrates on the merits of the extension as proposed by the applications, and the single paragraph relating specifically to the ground (a) appeal contains no substantial argument or discrete analysis concerning the existing extension. I therefore do not consider

that the applicants have incurred unnecessary or wasted expense in relation to the ground (a) appeal.

13. However, the applicants have also appealed on grounds (b), (f) and (g). The subject of these grounds is not the planning merits of the development concerned. These are instead concerned with, and limited to, the content and requirements of the enforcement notice. There is thus no material overlap between these grounds of appeal and the appeals against the refusal of planning permission and listed building consent. It follows that in pursuing these grounds of appeal, the applicants incurred expense which the Council's withdrawal of the notice then rendered unnecessary and wasted.

14. I therefore conclude that Applications C and D should both fail in relation to the appeals on ground (a), but succeed in relation to the appeals on grounds (b), (f) and (g).

Costs Orders

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended (the 1990 Act), and all other enabling powers in that behalf, IT IS HEREBY ORDERED that:

    a) Cherwell District Council shall pay to Mr Liaquat Ali the costs of the appeal proceedings limited to those costs incurred in relation to the grounds stated at section 174 (2)(b), (f) and (g) of the 1990 Act; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal reference APP/C3105/C/16/3152930 more particularly described in the heading to this letter at Application C.

    b) Cherwell District Council shall pay to Mr Riasat Ali Sadiq the costs of the appeal proceedings limited to those costs incurred in in relation to the grounds stated at section 174 (2)(b), (f) and (g) of the 1990 Act; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal reference APP/C3105/C/16/3155364 more particularly described in the heading to this letter at Application D.

16. The applicants are now invited to submit to Cherwell District Council, to whom a copy of these decisions has been sent, details of those costs with a view to reaching agreement as to the amounts.

J Flack

INSPECTOR