The Planning Inspectorate

Costs Decision

Site visit made on 30 January 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 23 February 2017

Costs application in relation to Appeal Ref: APP/B9506/C/16/3161231
Land at Far Corfe View, Lyndhurst Road, Ashurst, Southampton SO40 7AR

- 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 New Forest National Park Authority for a full award of costs against Mr Paul Oldridge.
- The appeal was against an enforcement notice alleging the extension of the dwelling and outbuilding consisting of the erection of decking and a pergola structure.

Decision

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

Reasons

2. The application for costs was made in writing by the Authority in January 2017 with the appellant's response being dated 23 January 2017. The Authority made no further response to those comments.

3. The Planning Practice 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.

4. As is clear from the appellant's initial grounds of appeal, he fully appreciates the planning history of the building and the Authority's policy position towards adding habitable floorspace to dwellings within the National Park. The Authority's contention that he has sought to argue the contrary and that this was unreasonable is not therefore supported by the evidence.

5. Turning then to the appeal on ground (a), the appellant's position is that the development that is the subject of the notice does not add habitable floorspace. Initially, he argued that he was not in breach of policy DP11. His appointed planning consultant articulated these points in greater detail later. Accordance or not with policy DP11 is a matter first of interpretation and, second, application of that interpretation to the specific circumstances of the case. Irrespective of my decision, it was not unreasonable of the appellant to challenge the Authority's interpretation of its own policy, particularly as it relied for that interpretation on an information leaflet which, on the evidence, appears to have no statutory status.

6. Whether or not the development carried out conflicts with the other DPD policies cited in the reasons for issuing the notice is a matter of planning judgement. The totality of the appellant's evidence sets out his position in that respect. The recent appeal decision determined against the appellant was for a

wholly different scheme. It was not unreasonable for the appellant to challenge the Authority's planning judgement with respect to the notice development.

7. It was not therefore unreasonable of the appellant to pursue an appeal on ground (a) as he did. The fact that I considered that the deemed planning application should succeed actually has no bearing on that conclusion.

8. Turning briefly to the appeals on ground (f) and (g) which also form part of the Authority's application, the success on the ground (a) appeal meant that the merits of the appellant's case on both were not considered. Nevertheless, both cases appear to have been misconceived.

9. The Council's purpose in issuing the notice was to remedy the breach of planning control. Whatever mechanism was used to prevent the enclosure of the structure, it would leave the unauthorised structure in place. The Authority's purpose in issuing the notice would thus be negated. That cannot be the outcome of an appeal on ground (f).

10. The initial appeal on ground (g) simply stated that the period allowed was not long enough and proposed a much longer one. No explanation for either position was given. While that is not an unusual way for appellants to deal with this ground, it provides no evidential basis on which to vary the period for compliance. Although the appointed planning consultant expanded upon this later, that was in terms of the time that may be taken to engage a contractor to do the work. It did not explain why the work itself would take longer than the period allowed or why a contractor was required in any event.

11. I consider therefore that neither ground of appeal would have had a reasonable prospect of success. The Planning Practice Guidance explains that an appellant is at risk of an award of costs being made against them in such circumstances.

12. However, the second limb for an award to be made requires unnecessary or wasted expense to have been incurred. The expense wasted by the Authority appears to be limited to that incurred in the preparation of the five paragraphs in its appeal statement which, together, deal with these two grounds of appeal. I consider those costs to be *de minimis.* The second limb for an award to be made is not met.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Brian Cook

Inspector