
Costs Decision

Site visit made on 28 February 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 27 March 2017

Costs application in relation to Appeal Refs: APP/P4605/C/16/3163354 & APP/P4605/C/16/3163355

57 Knightlow Road, Birmingham B17 8PX

- 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 Dr A Abdullah and Dr N Butt for a full award of costs against Birmingham City Council.
 - The appeal was against an enforcement notice alleging: Without planning permission, the construction of a raised patio area in the rear garden.
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Decision

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

Summary of the Applicants' Case

2. The application for an award of costs was submitted in writing and, as the details will be familiar to both parties, I shall summarise the main points within my decision. The applicants consider that the Council could have resolved the matter through the normal planning process without the need to serve an enforcement notice. The Council refused the opportunity to submit a planning application and that amounts to unreasonable behaviour.

The Council's Response

3. The Council's response was also submitted in writing and the following is a summary of the main points. The Council would serve a notice where there is a clear public interest in enforcing planning law and planning regulation in a proportionate way. The Council's Adopted Planning Policies are designed in order to ensure that development does not have a significant or detrimental impact on the health, housing needs and welfare of those affected by the proposed action, or those who may be affected by a breach of planning control.
 4. A complaint about a raised patio under construction was received by the Council on 9th June 2016. The matter was assessed and a letter was sent out to the appellant on 28th June 2016 advising that planning permission was required because it was more than 300mm in height. The Council advised that planning permission was unlikely to be forthcoming because of overlooking issues. The Appellant was asked to remove the patio by 31st July 2016. An enforcement notice was issued on 17 October 2016. The Council contend that a reasonable amount of time was given before issuing the notice for the owners to come forward to discuss the issue, but there has been no communication whatsoever from them. It is only after the enforcement notice was served that the owners installed boundary fencing so the Council were not given the
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opportunity to assess this. The Appellant has exercised his right to appeal the notice and under a ground (a) appeal where he has the opportunity to contest the planning merits, which in essence is asking for the development to be considered in a similar way that a planning application would.

5. Therefore, the Council does not consider that it behaved unreasonably and it is requested that the application is dismissed.

Reasons

6. The Planning Practice Guidance (March 2014) (the PPG) advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 049 of the PPG provides a non-exhaustive list of the type of behaviour that may lead to a substantive award of costs against a local planning authority. Such examples include refusing planning permission on a planning ground capable of being dealt with by conditions where it is concluded that suitable conditions would enable the proposed development to go ahead.
7. It is clear that the raised patio area represented a breach of planning control for which planning permission was required. The applicant suggests that the Council "refused the opportunity" to submit a retrospective planning application but the Council denies that it received any communication from the applicants in between the point at which the letter notifying them of the breach was sent on 28 June 2016 and the service of the enforcement notice in October 2016. The Council did advise that planning permission was unlikely to be forthcoming for the structure but, nonetheless, it would have been open to the appellant to submit a planning application and to appeal if that application was refused by the Council.
8. In my view, there was nothing unreasonable in the Council giving its view on the merits of the development and there is no indication that the Council refused to deal with any planning application. From the information before me, no such application was submitted. Moreover, for the reasons set out in my associated appeal decision I concurred with the Council that the effect of the development would be unacceptable without mitigation. It appears that the fencing along the perimeter boundaries was only erected after the notice was served and it was entirely reasonable in my view for the Council to serve the notice based on the impact without any mitigation in place.
9. The Council also raised concerns regarding the effect of any fencing on the outlook from neighbouring dwellings and the consideration of those matters, and the issue of whether it would be appropriate to attach conditions relating to boundary fencing required a finely balanced judgement. On the basis of the position as it stood at the time the enforcement was served I am satisfied that the Council did not behave unreasonably. In the absence of any unreasonable behaviour there are no grounds for an award of costs and I shall refuse the application.

Chris Preston

INSPECTOR