The Planning Inspectorate

Costs Decision

Site visit made on 6 March 2017

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 24 April 2017

Costs application in relation to Appeal Refs: APP/A0665/C/16/3161998 and 3162000

Ashton Hall, Kelsall Road, Ashton, Chester CH3 8BH

- 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 Peter Johnston and Mrs Helen Johnston for a full award of costs against Cheshire West & Chester Council.
- The appeal was against an enforcement notice alleging the erection of a three bay garage.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (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 expense in the appeal process.

3. A planning appeal against refusal of planning permission for the three bay garage, as built and not in accordance with planning permission 15/01057/FUL, was submitted on 5 September 2016 and the start date of the appeal was determined to be 7 October 2016. An appeal questionnaire and accompanying documentation were submitted by the Local Planning Authority (LPA) on 15 October 2016. The LPA informed the Appellants' Agent on 19 October 2016 that they would be preparing an enforcement notice relating to the garage and that they would "…e-mail a copy of the…(notice)…to you as soon as possible". The enforcement notice is dated 20 October 2016.

4. The LPA has stated, in response to the claim for costs, that "It is clear…that a breach had occurred…", that "…sufficient investigation took place before service to identify the breach" and that "…an enforcement notice was proportionate in this case…". It must indeed have been obvious that a breach had occurred, the Council had refused a planning application for retention of the garage less than four months before, and no more investigation was necessary in addition to that which had been undertaken in relation to the application and the planning appeal. These factors are not therefore relevant to consideration of the claim for costs.

5. The Appellants' Agent argues that the issue of the enforcement notice was not proportionate given that a planning appeal was pending. In this regard he has referred to the Council's 'Local Planning Enforcement Plan' which states, at

paragraph 4.5, that commencement of enforcement action will, amongst other things, "…not normally be progressed…where a "live" appeal has been submitted to The Planning Inspectorate" and that "This will depend on the severity of harm a breach is causing". The LPA has not explained why the severity of the breach was sufficient to justify setting aside the normal presumption that enforcement action would not be progressed if a planning appeal was pending consideration.

6. The harm, as a matter of fact, is far from severe. In this regard the Council has not alleged that any harm is caused to the amenities of any nearby residents and has only alleged harm to the significance of heritage assets. Given that the garage only differs from the permitted garage in the pitch of its roof, and thus in the height of its ridge, the alleged harm, irrespective of the outcome of the appeals, is bordering on insignificant. There was therefore no justification for the Council to set aside their own guidance and to pursue enforcement action when a planning appeal had been submitted only two weeks before.

7. The Council has acted unreasonably and the Appellants have incurred unnecessary expense in submitting an appeal against the enforcement notice. The unnecessary expense, given that supporting documentation is largely the same as that submitted with the planning appeal, is limited to the preparation of an appeal statement and the completion and submission of the appeal form. The claim for costs, to this extent, thus succeeds.

Costs Order

8. 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, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cheshire West & Chester Council shall pay to Mr Peter Johnston and Mrs Helen Johnston the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of an appeal statement and the completion and submission of the appeal form; such costs to be assessed in the Senior Courts Costs Office if not agreed.

9. The applicant is now invited to submit to Cheshire West & Chester Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Braithwaite

Inspector