The Planning Inspectorate

Costs Decision

Hearing held on 31 May 2017

Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 12 June 2017

Costs application in relation to Appeal Ref: APP/H5390/C/16/3163005
74 Stamford Brook Road, London, W6 0XN

- 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 Daniel Fulton for a full award of costs against the Council of the London Borough of Hammersmith & Fulham.
- The hearing was in connection with an appeal against an enforcement notice alleging the erection of a single storey rear extension to the side of the back addition.

Decision

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

The submissions for the Appellant – Main points

2. The Appellant's submission was made in writing. The Appellant understood he had planning permission for a 3m high extension and was told by an enforcement officer that enforcement action was not considered appropriate. Nevertheless, some seven months' later, without notice, a notice was issued.

3. Discussions took place thereafter and the Appellant submitted an application for an altered development. The service of the notice was not necessary.

4. The report justifying enforcement action did not mention relevant information, including that the 4m high conservatory had been removed. The enforcement team were not fully aware of the circumstances of the case.

5. The Appellant considers that the notice is a nullity and the Council was given the opportunity to withdraw and correct the notice. The reasons for issuing the notice are false and misleading. Since issuing the notice correspondence from the Council has been misleading, confused and inaccurate.

6. At the hearing the Council sought to introduce new evidence relating to what the Planning Officer had in mind when considering the 2013 application.

The response by the Council – Main points

7. The Council's response was made in writing. The Council gave the Appellant time and opportunity to rectify the breach or submit a planning application; in the absence of remedial action the Council considered it proportionate and appropriate to issue the notice. The enforcement officer did not state that

enforcement action would not be taken but that it was not appropriate at that time.

8. The notice was necessary given there had been no solution to the breach and it was reasonable for the Council to issue the notice in the circumstances. The report set out a reasoned judgement that dealt with the concerns raised.

9. If the Appellant had implemented the 2016 approval he could have withdrawn the appeal and thus avoided further costs.

10. The Council considers that the notice is not a nullity and it is not invalid. The notice is clear in terms of the breach and the steps required to be taken to remedy the breach.

11. The reference to the Planning Officer was to respond to assertions made by the Appellant, not to introduce evidence.

Reasons

12. The 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[1].

13. S.172(1)(b) of the 1990 Act empowers a local planning authority to issue an enforcement notice when it "appears" to them that there has been a breach of planning control and they consider it "expedient", having regard to the provisions of the development plan and to other material considerations. It has been held[2] that there was no jurisdiction for an Inspector to determine whether or not the local planning authority had complied with its obligation under s.172. The issue of whether it was 'expedient' for the Council to issue a notice is a matter to be dealt with by way of judicial review not for a costs application such as this.

14. Given that enforcement action is discretionary, the National Planning Policy Framework[3] requires Council's to act proportionately in responding to suspected breaches of planning control and the Guidance says that Councils are at risk of an award of costs if an appeal could have been avoided by more diligent investigation[4]. In this case the Council had investigated the development and had had discussions and correspondence with the Appellant; he was fully aware of the Council's stance; and he had been given the time and opportunity to make an application or to rectify the breach. I therefore consider that the Council did not act unreasonably within the terms of the Guidance in issuing the notice.

15. The reasons for issuing the notice were based on the Council's understanding of the 2013 permission. Although I corrected the reasons by deleting the reference to the increase in height, as originally drafted the reasons did not render the notice a nullity and the notice satisfied the provisions of s.173 of the 1990 Act and the Regulations[5]. I do not consider the Council acted unreasonably in this respect.

[1] PPG Appeals Paragraph 030
[2] *Britannia Assets v SSCLG & Medway Council* [2011] EWHC 1908 (Admin)
[3] Paragraph 203
[4] PPG Appeals Paragraph 048
[5] The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 (SI 2002/2682)

16. I found against the Appellant in that I did not find the notice to be a nullity, although I did correct it. I also found against the Appellant with regard to his interpretation of the 2013 planning permission and his appeals on grounds (b), (c) and (a) failed and the deemed planning application was refused.

17. Matters relating to what the Planning Officer (who has now left the Council) may or may not have considered when dealing with the 2013 application are speculation on the part of the Appellant and Council and I did not take into account the information given to the Hearing by the Council about what they had been told by him.

Conclusions

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

Gloria McFarlane

Inspector