The Planning Inspectorate

Costs Decision

Site visit made on 6 June 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 11 July 2017

Costs application in relation to Appeal Ref: APP/P4605/C/16/3165060
183 Gristhorpe Road, Selly Oak, Birmingham B29 7SP

- 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 S Butt for a full award of costs against Birmingham City Council.
- The appeal was against an enforcement notice alleging without planning permission the erection of a detached structure to the rear of the premises.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. The appellant refers to an appeal decision[1] for a single storey rear detached structure at 27 Hallewell Road, Edgbaston, Birmingham B16 0LP dated 18 January 2017. It is argued that the Council has acted unreasonably because despite a formal request to do so, it did not reconsider its decision to issue the enforcement notice in light of the appeal decision for an almost identical development.

4. The PPG states that an enforcement notice should only be issued where the local planning authority is satisfied that it appears to them (my emphasis) that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations.

5. Case law establishes that it has to remain a matter of fact and degree as to whether facilities were, or were not, an integral part of the ordinary residential use of the primary unit based on the particular circumstances of each individual case (my emphasis). Thus, although similarities may exist between these two cases, given the nature of the argument brought under ground (c) and having regard to the particular circumstances of the case, it would not be appropriate to rely entirely on the specific circumstances of an alleged unauthorised development taking place at one address when making a judgement on

[1] Ref: APP/P4065/C/16/3157608

whether or not to issue an enforcement notice for a different development taking place at another.

6. As detailed in my appeal decision I have found on the evidence before me that the appeal structure is permitted development by virtue of Schedule 2, Part 1, Class E1 of the Town and Country Planning (General Permitted Development) Order 1995. However, that does not mean that the Council's contrary view necessarily amounted to unreasonable behaviour. The Act requires only that it should "appear" that a breach has occurred for action to be taken and it is clear that in this instance the Council made an assessment based on its own investigation which included a number of site visits and communication with the appellant. I do not find that the decision to issue a notice was taken lightly or without due consideration so as to amount to unreasonable behaviour albeit that I have reached a different conclusion.

7. The Council's submissions provided sufficient evidence to support its reasons for issuing the notice which adequately demonstrated by reference to the development plan and other material considerations why it considered planning conditions would not overcome their objections. Thus, although I did not consider the overall planning merits of the case under the ground (a) appeal, I consider that the Council did not act unreasonably in deciding to issue the enforcement notice, nor did it act unreasonably in defending its decision in this appeal. Thus, any expenses incurred by the appellant would have had to be incurred anyway in pursuing the appeal.

8. For the above reasons, and with regard to all other matters raised, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated.

Elizabeth Jones

INSPECTOR