The Planning Inspectorate

Costs Decision

Site visit made on 28 June 2017

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

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

Decision date: 17th August 2017

Costs application in relation to Appeal Ref: APP/G1250/D/17/3172645
12 East Avenue, Bournemouth BH3 7BY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr and Mrs MJ Nash for a full award of costs against Bournemouth Borough Council.
- The appeal was against the refusal of planning permission for the demolition of an existing asbestos and timber garage and erection of a new garage with associated store and sun lounge to rear. Ancillary "granny" annexe accommodation comprising of hall, small kitchenette and stairs to ground floor and two bedrooms with en-suites to first floor.

Decision

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

Reasons

2. 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. Firstly, contrary to the Council's suggestion, it is a matter for the appellants as to whether an agent is employed to act on their behalf; if unreasonable behaviour leading to an unnecessary appeal is demonstrated, the agent's professional fees incurred in making the appeal are, in principle, recoverable.

3. The appellants' allege that the Council acted unreasonably in respect of other applications, where it is said that the Council acted prejudicially and inconsistently. Two examples of ancillary buildings were referred to by the appellants. One, at 1 Nairn Road, pre-dated the designation of the conservation area, albeit that a subsequent, more recent extension was allowed, but its history and relationship to the host dwelling distinguishes it from the appeal proposal. The other at 38 Alyth Road relates to an annexe contained within a ground floor part of a two storey extension to the host dwelling, with an internal interconnecting door to the host accommodation, rather than a separate, freestanding building, and again is not an exact similarity. I therefore find that the Council was not unreasonable in not following these examples.

4. On the wider issue, as to whether the proposal could be treated as an ancillary annexe, I indicated in the substantive appeal decision that this was a matter of fact and degree. Although I did not agree with the Council's view on this matter, it required the exercise of planning judgement, based on the facts of the case. The Council clearly explained why it felt that the annexe was not

ancillary, and despite my finding that both the use and the appearance of the annex would be acceptable, I do not consider that the Council arrived at its conclusions in an unreasonable manner.

5. In the appellants' final reply to the Council's response to the costs application, a further matter was raised about the Council's behaviour in relation to tree protection. The concern about the proximity of the building to the tree had adequate foundation in view of the importance of trees to the appearance of the conservation area, and the consequences of the revised siting to address this concern, by bringing closer towards the road, did not form a major plank of the Council's objection and again I do not consider that this reveals unreasonable behaviour.

6. Whilst I note that requests for a site visit and opportunities to discuss the proposal were not taken up by the Council, I am not convinced that this would have led to an appeal being avoided. Similarly, even had the Council dealt with the application more expeditiously, there is nothing to suggest that it would have come to a different view, or that an appeal would not have been necessary.

7. I therefore consider that the Council's case had sufficient substance on which to base the reasons for refusal. Unreasonable behaviour as referred to in the Planning Practice Guidance has not been demonstrated and the application for an award of costs fails.

JP Roberts

INSPECTOR