
Costs Decision

Site visit made on 25 April 2018

by Simon Hand MA

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

Decision date: 11 May 2018

Costs application in relation to Appeal Ref: APP/Z2830/C/17/3180375 Land at Potterspury House, 3 Poundfield Road, Potterspury, Towcester, NN12 7QL

- 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 South Northants District Council for a full award of costs against Mr Richard Armstrong.
 - The appeal was against an enforcement notice alleging the erection of a wooden fence above a stone boundary wall, being adjacent to a highway and in excess of 1m high.
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Decision

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

The Cases for the Parties

2. The Council say they advised Mr Armstrong that they were unlikely to support the retention of the fence, but suggested he make an application to test this informal advice. That application was refused and the enforcement notice issued. Two appeals were then made by the appellant, one against the planning refusal and one against the enforcement notice. The latter was appealed on ground (f) only. The planning appeal was dismissed in August 2017 and the Council wrote to Mr Armstrong informing him that his ground (f) appeal had no likelihood of success and warning him they would apply for costs if he pursued it. Then ground (c) was added to the enforcement appeal in November 2017. The Council's statement makes it clear this also had no chance of success.
3. The appellant has a different take on events. He wrote to the Council after the planning appeal was determined but before the ground (c) was added, suggesting the whole matter could have been sorted out if the fence had been considered by Councillors, rather than officers. He suggested the Council allow him to make another application and for this to be determined by the planning committee and if so he would withdraw his enforcement appeal. The Council failed to act on this offer and so, having been prompted by the planning appeal decision to apply to have the question asked of whether planning permission was even needed or not he added the ground (c). Therefore the Council brought the appeal on themselves by not agreeing to his offer.

Reasons

4. 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.
5. It seems to me that Mr Armstrong, who is unrepresented, has never quite understood the two parallel planning and enforcement appeal systems. There was no reason why the planning merits of the case, including whether the fence could have been made acceptable, should not have been fully aired at the planning appeal, but it seems they were not. The Council are correct that the enforcement appeal, made only on grounds (c) and (f) was not the place to raise these issues again, or to argue that the appellant had in some way been disadvantaged by the actions of the Council. Grounds (c) and (f) are, in the absence of a ground (a) appeal, limited to the questions as to whether the fence require planning permission and are the requirements excessive given the allegation? Whether the planning application should have been determined by committee or officers is irrelevant to the outcome of the enforcement appeal.
6. However, the question of costs is whether the appeal was reasonable. Quite clearly the ground (f) had no chance of success as I explain in the decision letter. The appellant was warned of this but pursued that ground regardless. However the ground (c) is less clear cut. This relied on an interpretation of certain words in Class 2 Part A of the General Permitted Development (England) Order 2015. In my view the appellant's argument was no so without merit that it was bound to fail, particularly as this was a possibility that had been mentioned in the planning appeal decision. Consequently, I do not consider that pursuing the ground (c) was unreasonable.
7. I shall therefore issue a partial award against the costs incurred in dealing with the ground (f) appeal.

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 Mr Richard Armstrong shall pay to South Northants District Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the appeal on ground (f) only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Mr Armstrong, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

Inspector