The Planning Inspectorate

# Costs Decisions

Site visit made on 2 July 2018

**by P N Jarratt BA DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 July 2018**

**Costs application A in relation to Appeal Refs: APP/B9506/17/3187537 and APP/B9506/17/3187538 Meadow View Cottage, (formerly Torbay), Pound Lane, Burley, Ringwood, BH24 4ED**

- 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 New Forest National Park Authority for a full award of costs against Mr William John Holley and Mrs Anne Denise Holley.
- The appeal was against an enforcement notice alleging the erection of a conservatory.

**Costs application B in relation to Appeal Ref: APP/B9506/17/3187537 and APP/B9506/17/3187538 Meadow View Cottage, (formerly Torbay), Pound Lane, Burley, Ringwood, BH24 4ED**

- 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 William John Holley and Mrs Anne Denise Holley for a full award of costs against New Forest National Park Authority.
- The appeal was against an enforcement notice alleging the erection of a conservatory.

## Decisions

**Costs application A:** The application for an award of costs is refused.

**Costs application B:** The application for a partial award of costs is allowed in the terms set out below.

## Reasons

1. 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.

## The Authority's application for costs

2. The Authority claims that the appellants have not been reasonable in exercising the right to appeal and have 'sought to brazenly circumvent planning strictures' for a development that was plainly not permitted. It was unreasonable to adapt the conservatory to detach it which led to additional work for the authority. The ground (f) appeal is premised on the notion that the conservatory can be retained in situ subject to further adaptations or elsewhere – this cannot be secured via a ground (f) appeal. The ground (g) appeal was made without justification when sufficient time has been afforded in which to comply. The appellants were requested to withdraw their appeals but did not act on this.

## The Appellants' response

3. The development falls within the GPDO. The Authority failed to justify the way in which the structure was enforceable against, referring to non-compliance with Local Plan Policies when it had been erected under permitted development (PD) rights. The appellants were entitled to modify the structure using their PD rights. The Authority was notified of this as a courtesy. The Authority is wrong in saying that the structure required permission which could not be secured via a ground (f) appeal.

## The Appellants' application for costs

4. The Authority has been unreasonable as it has made vague assertions unsupported by any objective analysis; it has failed to substantiate the alleged breaches; it has not followed case law; it entered into pre-application discussions but failed to provide reasonably requested information.

## The Authority's response

5. The appellants have undertaken a calculated and fragrant breach of planning control in an effort to circumvent policy strictures when it comes to extending development in the National Park. As a written representations appeal no Statement of Common Ground is necessary. The authority has met with the appellants to discuss ways of addressing the breach; the Authority has been clear from the outset that the structure was an extension to the dwelling; no planning or Lawful Development Certificate application was made prior to service of the notice; there is no ground (a) appeal; the reasons for issuing the notice is complete, precise, specific and relevant; there was no formal pre-application advice; there are limited appeal decisions relating to this issue and the Authority is entitled to form its own view; the appellants have failed to work with the Authority constructively.

## Reasons

6. The Authority's view that the structure has been designed and built with the intention of circumventing the planning system to secure a further extension to the dwelling is probably correct in the light of advice previously provided to the appellants. Additionally, works carried out subsequent to the notice being served may appear to some as a means of making the detachment of the structure from the house more apparent. However, the Authority's concern about an appellant deliberately seeking to circumvent the planning system fails to take account of whether what has been done is actually lawful in the context of the relevant legislation.

7. The appellants sought advice from the Authority about how close an outbuilding could be situated next to a house but were advised that the development must simply be detached. However, I note that had the appellants been advised of any concerns of the Authority over how close an outbuilding could be to a dwelling, then an application for a Lawful Development Certificate would have been made.

8. Rather than taking issue with the approach taken by the appellants in securing the development they sought, the Authority should have addressed in greater detail the DCLG Technical Guidance 'Permitted development rights for householders' (April 2017). This distinguishes between Class A and Class E

buildings in the GPDO[1] and indicates that buildings which are attached to a house are not permitted under Class E but subject to the rules in Class A. Although photographs were submitted, the Authority has failed to put forward any detailed analysis of the structure to demonstrate that the conservatory/garden room was attached to the house at the time the notice was served. Instead, the Authority relied more on how people may view the structure as an extension rather than as an outbuilding; that it was used as habitable accommodation; and, would be refused planning permission under Local Plan policies, all of which are of little relevance in the context of whether the alleged unauthorised development is permitted development and meets the limitations and conditions of the GPDO.

9. Following the service of the notice, the appellants referred the Authority to a Lawful Development appeal[2] but this was not considered to represent substantive case law relevant to the appeal subject to this application. As an alternative, the Authority referred to two other appeals[3] as part of their case. However, neither of these appeals supports the Authority's case as it is evident from the decisions that the alleged unauthorised structures were attached and physically adjoined to the dwellings.

10. Had the Authority accepted what the GPDO and the Technical Guidance actually says in respect to attachment to a building, rather than apply their own interpretation to it, then the appeals could have been avoided. Alternatively, the Authority could have provided a more detailed justification for the garden room being attached to the dwelling, but the Authority did not do so, either prior to the appeal as requested by the appellants or as part of their statement of case.

11. The Planning Practice Guidance states that 'for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate'. Additionally, an objective analysis of the facts associated with attachment could have led the Authority to a different conclusion. Whilst the Technical Guidance does not represent case law or policy and there is still an element of interpretation to the GDPO, the Authority should have had greater regard to that Technical Guidance, notwithstanding their argument that they are entitled to reach their own view on the development.

12. The appellants have exercised their right to appeal and have appealed on grounds (c), (f) and (g), all with reasoned arguments, and their appeals on these grounds did not represent unreasonable behaviour which has led to unnecessary and wasted expense by the Authority.

13. However, I consider the Authority's approach to represent unreasonable behaviour which has led to unnecessary and wasted expense by the appellants with the exception of the costs associated with the preparation of a draft statement of common ground. The appellants' professional agent should have been aware that this is unnecessary for an appeal following the written procedure.

[1] Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)
[2] APP/Q5300/X/10/2125856
[3] APP/N5090/C/12/2173250 and APP/J3530/X/2179210

## Conclusions

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

15. I also find that in Costs Application B unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

## Costs Order

16. 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 New Forest National Park Authority shall pay to Mr William John Holley and Mrs Anne Denise Holley the costs of the appeal proceedings described in the heading of this decision with the exception of those costs incurred in the preparation of a draft statement of common ground; such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. The applicants are now invited to submit to the New Forest National Park Authority to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Peter Jarratt*

Inspector