



Costs Decision

Site visit made on 17 July 2018

by D E Morden MRTPI

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

Decision date: 28 September 2018

Costs application regarding Appeal Refs: APP/W1905/C/17/3181186 & 87 Oak House Farm, Newgatestreet Road, Goffs Oak, Herts, EN7 5RU

- 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 V J & Mrs K M Barclay for a full award of costs against Broxbourne Borough Council.
- The appeal was against an enforcement notice alleging the material change of use of a single dwelling house to two separate units of accommodation by subdivision of the main dwelling house and associated operational development. The separate operational development consists of an erection of an unauthorised timber link structure to connect the approved front extension to the main dwelling house with the approved garage and erection of a further unauthorised timber extension to the garage to facilitate the unauthorised change of use.

Decision: The application for an award of costs is allowed in the terms set out in paragraphs 6 and 7 below.

Reasoning

1. The appellants' application and the Council's response were set out in full in writing at the appeal stage and there is, therefore, no reason to repeat them here. 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.
2. Whilst the Council attempt to make much of the note from Mrs Barclay that accompanied the November 2015 application it is clear that the Council's planning and enforcement officers had visited the site (generating the November application) and had the opportunity to see what was there both inside and outside. There is no suggestion that they were prevented from inspecting anything. If they had investigated thoroughly at that time (as argued by the appellant) they should have worked out they were in time (at that stage) to have issued a Notice within the relevant four year period.
3. Similarly the Council ought to have known, if they had undertaken a thorough and full investigation that it was too late in 2017 to issue a notice other than on the small wooden extension to the garage. It is also clear that in the November 2015 application (registered in January 2016) the appellants were unrepresented people dealing with a complicated situation so far as the law was concerned and it seems to me the Council have put forward the suggestion of concealment as almost a last resort and the only argument that could be made having left it far too long to issue the notice it finally did.

4. The matter should have been investigated immediately after the site had been inspected in late 2015. After the notice was issued, the evidence put forward in support of the ground (d) case was considerable, as is evident from my decision and the Council could, once the appeal had been lodged and that evidence put forward, have withdrawn the Notice and saved the appellants some costs. The Notice concerning the wooden extension to the garage was issued in time: it was concerned with an arguable issue (bearing in mind the extant adopted policies) that, in my view, the Council were perfectly entitled to pursue. A new Notice could have been issued just dealing with that extension.

Conclusion

5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated insofar as the change of use and the link extension are concerned and that a partial award of costs is justified.

Costs Order

6. 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 Broxbourne Borough Council shall pay to Mr V J and Mrs K M Barclay the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the ground (d) appeals; such costs to be assessed in the Senior Courts Costs Office if not agreed.
7. The applicant is now invited to submit to Broxbourne Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D E Morden

INSPECTOR