
Costs Decision

Site visit made on 25 February 2020

by **P H Willows BA MRTPI**

Decision date: 19th March 2020

Costs application in relation to Appeal Ref: APP/B3030/C/19/3236641 Land south of Crossways, Great North Road, Weston NG23 6TP

- 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 Peter Fendley for a partial award of costs against Newark & Sherwood District Council.
 - The appeal was against an enforcement notice alleging, without planning permission, the erection of a brick-built structure.
-

Decision

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

Reasons

2. The Government's 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. Unreasonable behaviour can be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The basis of the application is that the Council did not proactively engage with the appellant in order to resolve matters relating to this building. Had it done so, it is argued, a mutually satisfactory solution could have been arrived at. The applicant also questions the Council's motives and the speed with which it issued the notice. The applicant refers specifically to the appeal on ground (f) in making this application for an award of costs, and I have taken this as meaning that it is only any costs associated with pursuing the appeal on ground (f) that are sought. Nevertheless, I have considered all of the points raised in the application, irrespective of whether they relate specifically to the appeal on ground (f).
4. The types of unreasonable behaviour which may give rise to an award against a local planning authority cited in the PPG include lack of co-operation with the other party or parties and refusing to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
5. In this case, the Council issued the notice on the same day as its decision to refuse planning permission for the development as built. However, I do not consider that this was unreasonable. Having identified a breach of planning

control which it evidently regarded as harmful (regardless of whether there was distress caused to members of the public), the Council was entitled to pursue the matter formally. The application for planning permission had been made as a result of the Council's engagement with the applicant regarding the breach of planning control. Having refused planning permission, and bearing in mind the engagement that had already taken place, it was not unreasonable of the Council to take the view that there was little to be gained from further informal discussions.

6. I have noted the alternative requirements the applicant suggests the notice could have specified. However, these would have resulted in different outcomes to those the Council set out in the notice. Whatever the merits of those alternatives, the fact that the applicant prefers them does not make the requirements set out in the notice unreasonable. Nor does the fact that I have allowed the appeal against the notice in part mean that the Council's actions were unreasonable.
7. I am not persuaded that the Council has been unduly punitive in its approach. The apparent intention of the steps specified in the notice was to bring the building into line with the building for which prior approval was granted¹ rather than seeking total removal of the building. That strikes me as a measured approach, albeit not the particular one I have adopted in determining the appeal.
8. For these reasons I conclude that there has not been unreasonable behaviour on the part of the Council. Accordingly, it is not necessary to consider the question of unnecessary or wasted expense and the application for an award of costs fails.

Peter Willows

INSPECTOR

¹ 18/00264/AGR