The Planning Inspectorate

Costs Decision

Site visit made on 24 September 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2020

Costs application in relation to Appeal Ref: APP/H5960/C/20/3248613
5 Brynmaer Road SW11 4EN

- 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 the Council of the London Borough of Wandsworth for a partial award of costs against Mr Iain Burke Hamilton.
- The appeal was against an enforcement notice alleging the erection of a timber boundary fence to the front and rear of the property along the boundary with no. 3 Brynmaer Road.

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. The aim of the costs process is to encourage all those involved in the appeal to behave in a reasonable way.

3. Unreasonable behaviour can be either substantive, relating to the issues arising from the merits of a case or procedural, relating to process, in nature. In addition "unreasonable" is used in its ordinary meaning as established by the courts[1] and not in the stricter law definition of "Wednesbury" unreasonable.

4. Applicants for costs will also need to demonstrate clearly how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense in order for their application to succeed.

5. The Council argues that the retrospective planning permission for the development was refused on 16 August 2019 and following that decision the enforcement notice was served. The Council requested that the ground (a) appeal should be withdrawn as an Inspector has already dismissed an appeal for the same development. Therefore it is argued that lodging an appeal on ground(a) amounts to unreasonable behaviour and has resulted in the Council incurring unnecessary costs in dealing with this part of the appeal.

6. The appellant considers that he has not behaved unreasonably because he has the right to appeal on ground (a) if he so wishes and has paid the relevant fee for the ground (a) appeal to be heard.

[1] Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

7. It is clear to me that the appellant has put forward an alternative development in his ground (a) appeal. Although the deemed application on ground (a) is for the operational development which has been carried out and in that way is similar to a retrospective application under s73A of the Act, s177(1)(a)) allows permission to be given to any part of the matters alleged. As set out in my main decision, case law has also confirmed that planning permission may be granted for 'part of the matters'. It is clear to me that it is the appellant's intention for such a scheme to be considered under the ground (a) appeal. He is entitled to take this approach which does not constitute unreasonable behaviour.

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a partial award of costs is justified.

A A Phillips

INSPECTOR