The Planning Inspectorate

Costs Decision

Site visit made on 8 December 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Costs application in relation to Appeal Ref: APP/B9506/C/20/3253245
Land at Hordle Dene, Vaggs Lane, Hordle, Lymington SO41 0FP

- 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 J Sandford-Hart for a full award of costs against New Forest National Park Authority.
- The appeal was against an enforcement notice alleging without planning permission, the erection of walls, gates and fencing adjacent to the highway.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably, causing another party to incur unnecessary or wasted expenditure in the appeal process-paragraphs 028 and 030. Paragraph 031 advises that unreasonable behaviour can be either procedural-relating to the process, or; substantive-relating to the issues arising from the merits of the appeal.

3. The application for an award of costs was made in writing, in accordance with advice in the PPG at paragraph 035. The award is sought on substantive grounds. In summary, the applicant argued that the National Park Authority (NPA) had failed to properly explain why it considered that the works attacked by the enforcement notice were not permitted development. Also, the NPA had failed to show why the works caused planning harm and there had been a failure to properly engage in negotiations to resolve the matter without resorting to formal enforcement action.

4. The PPG paragraph 049 advises that a Local Planning Authority risks an award of costs being made against it on substantive grounds in circumstances including where there is a failure to produce evidence to substantiate each reason for refusal, or; vague, generalised or inaccurate assertions are made about the impact of a development which are unsupported by any objective analysis, or; where similar cases are not determined in a consistent manner, or; where there is a refusal to enter into discussions when a more helpful approach would probably have resulted in the appeal being avoided altogether.

5. In my opinion, the NPA offered a detailed explanation as to why it was considered that the works were in breach of planning control. As the applicant pointed out, in the absence of a statutory definition what is 'adjacent' to a

highway for the purposes of whether works are permitted development is open to interpretation. A clear, site-specific assessment of this matter was undertaken by the NPA and its findings were reached on a fact and degree basis. The NPA cited relevant case law supporting its interpretation of how adjacent to the highway should be understood in this context.

6. Therefore, the NPA's case in response to the ground (c) appeal had a sound evidential basis. The NPA did more than enough to put its case in relation to ground (c) on a respectable footing. In any event, in this ground of appeal the burden is on an appellant to show why on the balance of probability, their evidence should be preferred. For the reasons set out in the appeal decision letter, I was not persuaded by the applicant's case.

7. Similarly, the NPA provided clear and compelling, objective, site-specific evidence in their statement concerning the failure of the works to conserve the landscape and scenic beauty of the National Park. The NPA's evidence showed why in its view, planning permission should not be granted. The NPA provided a convincing explanation as to why the applicant's examples of other frontage boundary treatments in the locality should be afforded limited weight. I reached similar conclusions on the planning merits.

8. The works seem to have been drawn to the NPA's attention in the latter half of 2018. I understand that initial negotiations took place between the NPA and the applicant around that time. A retrospective planning application was not forthcoming and the parties met in January 2019. An application for a Lawful Development Certificate (LDC) made in respect of similar works at the appeal property was refused in June that year and no appeal was made[1]. Further discussions took place, during which the applicant suggested erecting a low wall in front of the wing walls. Another meeting took place in January 2020, following which the applicant also suggested depositing soil between the existing and proposed walls together with additional planting, the notice being issued in May 2020.

9. The various discussions and meetings during the enforcement investigation support the NPA's position that it has always been open to negotiations with the objective of trying to find a mutually acceptable solution to the matter. I acknowledge that negotiations have been drawn out over a protracted period, significant time having elapsed between the various discussions and meetings taking place. However, in my view this shows that the NPA made considerable efforts to avoid taking formal action if possible, allowing the applicant time for discussions and to remedy the matter, whilst also having regard to their likely enforcement priorities and resources available. In this context, I consider that the timescale involved in the investigation was not unusually lengthy. Therefore, I do not equate the NPA's approach with a lack of commitment to positively engaging with the applicant.

10. It is unfortunate that the applicant has experienced stress and anxiety due to the continuing uncertainty associated with this matter. Even so, as they pointed out, formal enforcement action should normally be regarded as a last resort. It is likely that the NPA would also have been criticised had a notice been issued at an earlier stage in the investigation. Following the apparent failure in early 2020 of further negotiations to resolve the matter and having regard to the planning harm identified, it was not unreasonable for the NPA to

[1] NPA Ref: 19/00277.

conclude that formal action was expedient. I am mindful that the notice was issued some months following the ending of the latest negotiations. Even so, it would not have been realistic for the applicant to assume that the matter had simply gone away. Therefore, receipt of the notice should not have taken them entirely by surprise.

11. By not taking formal action prior to determination of the LDC application, the NPA showed that it did not have a closed mind in its interpretation of planning law and that it was willing to consider the applicant's arguments. The NPA did not suggest alternative approaches to remedying its objections. Even so, in practice there will always be situations where, as in this case, there are significant constraints on what is likely to be acceptable in planning terms. As set out above, the NPA explained why it did not wish to see a frontage boundary treatment similar to those referred to by the applicant. Ultimately, it is not the NPA's role to design an applicant's scheme for them. As it happened, I found that a reduction in the works to no more than 1 m in height, i.e. similar to that which I understand was advised by NPA officers earlier in the negotiations, to be an alternative remedy to total demolition. In any event, the solutions put forward by the applicant during negotiations seem to have been somewhat contrived attempts to retain the works as a whole, rather than seeking to address the NPA's objections in a meaningful manner.

12. To my mind, the above events and the timescales involved all show that the NPA has endeavoured to be proactive and to be as helpful as possible, only taking formal action once it was clear that negotiations would not succeed in remedying the harm caused by the breach. This is consistent with the advice set out in chapter 4 of the National Planning Policy Framework, concerning positive engagement in the approach to decision-making and acting proportionately when taking enforcement action. I did not find any clear or convincing evidence of an uncooperative approach to resolving this matter on the part of the NPA. There is nothing in the NPA's actions to indicate that the appeal could have been avoided. For these reasons, the NPA's case in relation to the ground (a) appeal also had a respectable basis.

13. Accordingly, I find that the NPA has substantiated its case at appeal. In particular, I have not found anything to suggest that the NPA acted in a manner similar to any of the examples of unreasonable behaviour referred to above, or to other examples in the PPG, concerning the substance of the matter at appeal. It follows that the conditions for an award of costs at PPG paragraph 030 have not been met.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR