Costs Decision

Site visit made on 2 February 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2021

Costs application in relation to Appeal Ref: APP/C1760/C/20/3257706
Land adjacent to Walnut Bungalow, Wallop Road, Andover SP11 7EB

- 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 Schneider for a full award of costs against Test Valley Borough Council.
- The appeal was against an enforcement notice alleging the erection without planning permission of a residential garage.

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. "Unreasonable" has its ordinary meaning, as established by the Courts[1]. 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 paragraph 035. The award is sought on substantive grounds. The applicant's reasons for seeking an award are in summary that there is no evidence of the building in the appeal causing planning harm; there is no conflict with the Development Plan or national policy. In the absence of harm, enforcement action should not have been taken. The applicant had therefore been put to the expense of pursuing an appeal.

4. The PPG paragraph 049 advises that a Council risks an award of costs being made if they behave unreasonably with respect to the substance of the matter under appeal, including for example: 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.

5. The Council's written statement contained substantive, relevant, accurate evidence to support the reasons for issuing the enforcement notice. A detailed site-specific explanation of the planning harm caused by the appeal building,

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

which fully set out why the Council considered that planning permission should not be granted, was provided. The Council explained why it considered that the building did not accord with Development Plan policy regarding development in the countryside. In particular, the Council set out the policy basis behind the reference in the reasons for issuing the notice to a failure to enhance or maintain the vitality of surrounding rural communities. The Council also comprehensively set out its reasons for concluding that the building caused unacceptable harm to the character and appearance of the area, assessed against Development Plan policies. There is nothing to suggest that the Development Plan is not consistent with national policy. The Council's evidence was clear and objective. Ultimately, I found their planning merits arguments persuasive.

6. Accordingly, the Council has substantiated its case at appeal. In particular, there is nothing to suggest that the Council acted in a manner similar to the examples of unreasonable behaviour referred to above, or to the other examples set out in the PPG concerning the substance of the matter at appeal. Moreover, the Council acted reasonably in a manner consistent with national policy when exercising their discretion regarding the expediency of taking enforcement action. It follows that the conditions for an award of costs at PPG paragraph 030 have not been met.

Conclusion

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

Stephen Hawkins

INSPECTOR