Costs Decisions

Site visit made on 28 April 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 8 June 2021

Costs application in relation to Appeal Ref: APP/E2205/C/19/3241598
Land at Caradon, Mill Lane, Pluckley, Ashford, Kent TN27 0SL

- 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 Ashford Borough Council for a partial award of costs against Mrs Victoria Buchanan.
- The appeal was against an enforcement notice alleging the erection of a building (shown marked in the approximate position on the attached plan) ('the Building') used as an independent dwellinghouse.

Decision

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

Reasons

2. The 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.

3. The PPG gives examples of the type of behaviour which may give rise to an award of costs against an appellant, although the list is not exhaustive. This could include, a resistance or lack of co-operation in providing information or in responding to a planning contravention notice; providing information which is shown to be manifestly inaccurate or untrue; deliberately concealing evidence at planning application stage or a subsequent appeal.

4. The Council argues that the appellant provided inaccurate or deliberately misleading information and concealed evidence, by claiming that the building was not occupied as an independent dwelling when it clearly was, and by providing a 'purported' contract of employment. The Council asserts that the appellant sought to undermine planning controls by repeatedly making applications, and by being unclear as to whether an incidental or ancillary use was being sought. The Council also claims that the format of the appellant's costs claim led to unnecessary time being spent in responding to it.

5. I have seen no evidence that the appellant deliberately tried to mislead the Council or conceal the nature of the use. The appellant's account of the use of the building appears consistent and clear, and a response to the planning contravention notice was provided. It is not unreasonable for the appellant to seek to formalise a working relationship with a friend through the provision of a contract. The evidence points towards the appellant seeking to regularise the planning status of the building through applications for planning permission and

certificates of lawfulness, I do not see how this could be construed as undermining planning controls. It is a matter of fact and degree as to whether a use is ancillary or incidental, and it is not unreasonable to seek to establish a lawful use for the building as ancillary accommodation, or a fallback position as building used for a purpose incidental to the use of the dwellinghouse.

6. The Council argues that the appellant has unreasonably continued to pursue the appeal against the enforcement notice, even though planning permission had been granted on appeal for the building to be used for staff accommodation. However, the breach of planning control alleged in the enforcement notice is not the same as the development allowed by the appeal. The appellant is entitled to challenge the Council's view that the structure is a building rather than a mobile home. The appellant is also entitled to seek to vary the requirements of the notice with regard to ceasing the residential use. I do not therefore agree that the appellant behaved unreasonably in not withdrawing the appeal.

7. The appellant's costs application has been made in writing, as required for written representations cases. A costs appeal statement submitted by the appellant refers to the enforcement notice appeal as well as the s78 appeal. A further statement with additional comments relates solely to the enforcement notice appeal. It is quite clear which appeal is being referred to in the appellant's reasons for claiming costs. I do not see how the format of the appellant's cost claim constitutes unreasonable behaviour in this instance, as the Council has been able to respond to it.

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

N Thomas

INSPECTOR