



Costs Decision

Site visit made on 22 June 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2021

Costs application in relation to Appeal Ref: APP/D1780/C/21/3271165 Land at 2 Hamdown Cottages, Newbury Road, Shirley, Southampton SO15 5QY

- 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 Southampton City Council for a full award of costs against Ms Jatinder Anand.
 - The appeal was against an enforcement notice alleging without planning permission, the erection of a breeze block and timber raised platform structure on the roof of the existing single storey rear extension.
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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 and that behaviour has caused 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 Courts¹. 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 Council sought an award of its costs on substantive grounds. The application was made in writing, in accordance with the PPG paragraph 035.
4. The PPG paragraph 053 advises that the right of appeal should be exercised in a reasonable manner. An appellant risks an award of costs being made against them on substantive grounds where the appeal had no reasonable prospect of success.
5. In the supporting documents they provided, the appellant briefly but clearly explained why they considered that their appeal on the two grounds advanced should succeed. In respect of ground (f), two alternative remedies were advanced as a means of explaining why the appellant felt that the enforcement notice requirements were excessive. I acknowledge that a good deal of the appellant's case was more relevant to the planning merits of the development. However, in my experience a misunderstanding of the scope of matters which can be considered under ground (f) where there is no ground (a) appeal and no

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

deemed planning application is not uncommon, even when the submissions are prepared by suitably qualified and experienced professionals. The fact that the relationship between appeal grounds (a) and (f) is a matter the subject of a number of Court judgments in recent years is an indication of the relative complexity of this matter. In respect of ground (c), the basis for the appeal was that the works were permitted development. Although the onus is on the appellant to show why this ground of appeal should succeed, failure to discharge the burden of proof is not, in itself unreasonable. In relation to both grounds of appeal it was necessary to consider the information provided in support of the appellant's case in detail. This indicates that the appeal grounds had some evidential foundation. Therefore, I cannot be certain that the appeal had no reasonable prospect of success.

6. Moreover, I am conscious that as a householder, the appellant is a lay person, they were not professionally represented in this appeal and as far as I am aware, they did not obtain professional assistance in preparing the appeal submissions. More likely than not, the appellant has limited experience of the planning system. People who are unfamiliar with the planning system cannot sensibly be expected to have a detailed understanding of planning law. With this in mind, it is entirely understandable why the appellant might not have been able to set out the facts in support of their appeal more thoroughly.
7. Therefore, in my view the appellant has provided a respectable basis for both grounds of appeal. In doing so, they have not acted in a way similar to any of the examples of unreasonable behaviour relating to the substance of the matter at appeal, set out in the PPG at paragraph 053.
8. In any event, the Council did not explain why, given the relative brevity of the appellant's submissions, any more than a correspondingly concise response was required on their part. The amount of any work carried out by the Council in preparing a proportionate response to the appeal is likely to have been limited. As there was no deemed planning application arising from a ground (a) appeal, planning merits considerations were not relevant and the Council were not required to make a response on such matters. For the expense incurred in making a costs application to be pertinent, there must be evidence of unreasonable behaviour in the first place. Therefore, the Council have not clearly demonstrated how any alleged unreasonable behaviour on the part of the appellant has resulted in them incurring unnecessary or wasted expense in the appeal process.
9. Due to the above factors, the conditions for an award of costs at PPG paragraph 030 have not been met.

Conclusion

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

Stephen Hawkins

INSPECTOR