The Planning Inspectorate

Costs Decision

Site visit made on 12 October 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 05 November 2021

Costs application in relation to Appeal Ref: APP/N5090/C/19/3229982
68 Brent Terrace, London NW2 1BY

- 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 by Mr Aaron Schwebel for a full award of costs against the Council of the London Borough of Barnet.
- The appeal is against an enforcement notice alleging the use of an outbuilding as a self-contained residential dwelling.
-

Decision

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

Reasons

2. I have determined the application in the context of the government's Planning Practice Guidance. This includes the advice 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 appellant argues that the Council have failed to make reasonable investigations when preparing the enforcement notice. Notably they had not served a planning contravention notice or made an adequate site visit. As a result the plan attached to the notice was incorrect and the notice flawed. It follows that if the enforcement notice is quashed on grounds of invalidity, then the Council could issue a further notice, and the appellant would be put to the unnecessary expense of making a second appeal.

4. I find the notice to be invalid, and I have quashed it for the reason that it not possible to correct it without causing significant prejudice to an interested party. The appellant claims that he is owner of the relevant piece beyond the common footpath by virtue of adverse possession, and that the Council had not included the piece where the outbuilding actually stands. Furthermore, the notice reads as though the outbuilding stands within the outlined area, which is limited to the back garden of the property and the section of the common footpath to the rear. This is plainly not the case.

5. However, I have come to the conclusion that if the appellant held the title to the relevant piece of land, or held a tenancy, rather than simply occupying it, I could vary the enforcement notice plan accordingly without causing significant prejudice to either main party.

6. On the evidence presented, there is no indication the appellant has applied to be registered as proprietor in place of the registered proprietor of the land – which is Network Rail – as is required under the *Land Registration Act 2002.* It may be he could make such an application and it would be successful**.** However, for the time being Network Rail remain the registered proprietor. They were not issued with the enforcement notice, and I consider they would be caused significant prejudice if I were to include their land within the appeal site without their knowledge.

7. The invalidity of the notice arises not from the Council's failure to include the relevant piece within the defined outline of the site, but from the lack of clarity concerning the actual ownership of the land – of which the Council may well not have been aware. Although their failure to identify the actual location of the outbuilding may have been remiss, I consider that would have been readily correctable and not led to any unnecessary or wasted expense. However, the failure to identify all parties with an interest in the land was effectively out of their control, given that the appellant presents himself as owner.

8. I appreciate the Council may issue a new notice under the 'second bite' provisions of s.171B(4)(b) of the Act. However, this will not be a result of the Council's negligence, but rather of the appellant being at best vague concerning ownership of the land in question.

9. In the circumstances I do not consider the Council have behaved unreasonably in defending their case, or that the appellant has suffered unnecessary or wasted expense in bringing the appeal.

Conclusions

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

Stephen Brown

INSPECTOR