The Planning Inspectorate

Costs Decision

Site visit made on 7 February 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 07th March 2022

Costs application in relation to Appeal Ref: APP/J1535/C/21/3267017
Land at Millrise, Moreton Road, Bobbingworth, Ongar, Essex CM5 0LU

- 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 Julian Cullen for a full award of costs against Epping Forest District Council.
- The appeal was against an enforcement notice alleging the erection of a building within the residential curtilage of a dwelling

Decision

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

Background

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Reasons

3. The applicant considers that the Council has behaved unreasonably in relation to its investigation of the breach, the processing of a planning application which the applicant submitted in August 2018 and the advice which officers provided to the applicant prior to submission of that application. Additionally, the applicant considers that the failure of the Council to provide its expediency report is further evidence of the lack of cooperation which he has experienced.

4. The Guidance sets out that the local authority's handling of a planning application or enforcement notice prior to the appeal can lead to an award of costs against them.

5. In regard to the initial enforcement investigations, there may have been some confusion arising from the availability of the approved plans on the Council's website. However, the Council did not serve a notice at this stage and the applicant appears to have submitted an application to seek to obtain planning permission for the use and the works which had been carried out (the 2017 application).

6. Following the determination of the 2017 application, which was made within two months of the submission of the application, the applicant says that he started a dialogue with the Council. He could have submitted an appeal against

the Council's decision and the process by which he could have done so or sought further advice about doing so is set out on the Council's Decision Notice.

7. There is evidence that the Council advised the applicant that he should make changes to the building and that in terms of its height the alteration was acceptable and that the construction could remain as it was. An application for an amendment to the 2016 consent was requested to formalise the position and it was advised that the application be made as soon as was possible. There is a disclaimer on the advice, but this is in small print at the end of an email and not embedded in the text.

8. The Council advice was provided in November 2017 and repeated in February 2018. However, an application was not submitted until June 2018. The Council say that the application was not able to be validated until August 2018 (the August 2018 application). There is no explanation for the delay between the applicant receiving advice in November 2017 and February 2018 and his submission of a valid application.

9. The Council did not determine the August 2018 application until February 2020. There is no evidence of any correspondence between the Council and the applicant during that period and it is not clear if the applicant would have been aware of his ability to submit an appeal against non-determination. The Council says that the case passed through a number of case officers as a result of officers leaving the Council.

10. Other than the changes in staff there is no explanation of why the Council was not in contact with the applicant. Given the length of time involved I find the Council's lack of engagement with the applicant, particularly in view of its advice regarding the submission of the application, to be an example of unreasonable behaviour.

11. The August 2018 application was determined before the first lockdown associated with the Covid pandemic and in any event the Council says that as a result of its working practices their services were not affected.

12. In respect of the service of the enforcement notice, which is the subject of the appeal, there is no requirement for the Council to engage in a dialogue with the party on which the notice is to be served before service.

13. There was a period of several months between the determination of the August 2018 application and the enforcement notice being served. During this time the applicant could have submitted an appeal against the Council's decision following the instructions for doing so on the Council's Decision Notice, but he did not.

14. The reasons for the enforcement notice are required to be provided as part of the notice itself. Therefore, notwithstanding the grounds on which the Council sought to resist the applicants access to the expediency report, there was no requirement for it to release this information in order to enable the applicant to understand why the notice had been served.

15. Drawing all of these points together, I have not found that the Council behaved unreasonably in relation to its investigation of the breach or in terms of the issuing of the expediency report. Whilst the Council was not consistent in its approach to the acceptability of the building on the site, there was an indication that the advice from officers did not bind the authority to a formal decision.

This could have been made more obvious to the applicant given that he was not professionally represented but this does not amount to the Council having behaved unreasonably.

16. The lack of contact between the Council and the applicant over a prolonged period amounts to unreasonable behaviour. However, given that the appellant did not promptly react to the Council's pre-application advice and chose not to submit appeals against the refusal of planning permission, the delays which arose in relation to this appeal were not entirely the result of the Council's inaction. Therefore, in this case whilst I have found the Council has behaved unreasonably, it has not been shown that this on its own caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

17. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Sarah Dyer

Inspector