Costs Decision

Site visit made on 21 March 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Costs application in relation to Appeal Ref: APP/P3420/C/21/3276802
Land at Hazeley Paddocks, Keele Road, Keele, Newcastle under Lyme ST5 5AL

- 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 Mrs Sophie Thorley for a full award of costs against Newcastle-Under-Lyme Borough Council.
- The appeal was against an enforcement notice alleging: Without planning permission the erection of a timber pergola and the construction of a concrete plinth/hardstanding.

Decision

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

Reasons

2. The appellant seeks a full award of costs in relation to the Council's perceived unreasonable behaviour on both procedural and substantive grounds.

3. The Planning Practice Guidance (PPG) 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.

4. The basis for the appellant's appeal on procedural grounds is that she does not consider the Council's to have followed their own guidance and did not fully consider the expediency of issuing an enforcement notice.

5. The Council considered an application which retrospectively sought permission for the matters alleged in the notice. They resolved not to grant permission for that development. The Council have also confirmed that following that decision an expediency report was prepared and enforcement action authorised.

6. Paragraph 047 of the PPG[1] advises that local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Paragraph 048 of the PPG[2] states that for enforcement action, local planning authorities must carry out adequate prior investigation and are at risk of an award of costs if it is concluded that an appeal could have been avoided by

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more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate.

7. From the evidence before me the Council clearly investigated the matters alleged in the enforcement notice, took a decision not to approve the unauthorised works and to serve an enforcement notice to remove and rectify the breaches of control. I have not been provided with any substantive evidence to demonstrate that the Council behaved unreasonably in relation to procedural matters at the appeal which have led to the appellant incurring necessary or wasted expense during the appeal process.

8. In relation to substantive matters, Paragraph 049 of the PPG[3] states that the local planning authority are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

9. The enforcement notice clearly set out the Council's reasons for issuing the notice. It cited the policies which the Council considered the development to be contrary to, as well as referring to the development plan and the National Planning Policy Framework. The Council also supported their reasons for issuing the notice with a statement of case and that statement addressed all of the appellant's grounds of appeal.

10. It will be seen from my decision that I agreed with the Council that the pergola/chicken run and concrete plinth were breaches of planning control and inappropriate development in the Green Belt. I also found that the harm to the Green Belt is not outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development. In addition, there are no conditions that could make the development acceptable. Whilst I considered it necessary to vary the steps required to comply with the notice in part, the appeal could not have been avoided.

11. I appreciate that the appellant would have liked to have had an opportunity to engage further with the Council prior to the enforcement notice being served. However, that behaviour has not resulted in any unnecessary expense in the appeal process.

12. I therefore find that unreasonable behaviour resulting in unnecessary expense as described in the PPG has not been demonstrated.

Elizabeth Pleasant

INSPECTOR

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