The Planning Inspectorate

Costs Decision

Site visit made on 29 November 2022

by J Moss BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH JANUARY 2023

Costs application in relation to Appeal Ref: APP/J0350/C/21/3288254
Land at 15 Mansel Close, Slough SL2 5UG

- 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 Slough Borough Council for a full award of costs against Mrs Naseem Khan.
- The appeal was against an enforcement notice alleging the unauthorised subdivision of a single-family dwelling house into 3 separate dwellings.

Decision

1. The application for a full award of costs is allowed in the terms set out below.

The submissions

1. The reasons given for the costs application are summarised as follows:

   - no substantive evidence has been submitted to support the ground of appeal or address the Council's reason for issuing the enforcement notice.
   - the appellant must consider whether there is a reasonable prospect of the appeal succeeding.
   - the burden of proof rests with the appellant in respect of an appeal against an enforcement notice.
   - the Council has been put to unnecessary expense of processing the appeal and defending its position when the appeal effectively has no hope of succeeding.

2. The appellant was given the opportunity to respond to the costs application. No response was received.

Reasons

3. Paragraph 030 of the Planning Practice Guidance on Appeals (the 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.

4. Fundamentally, the recipient of an enforcement notice has a right to appeal the issue of the notice. The appeal form was completed by the appellant, setting out her grounds of appeal and why she thought that at the time the enforcement notice was issued, it was too late to take enforcement action

against the matters stated in the notice. That the appellant has made an appeal does not demonstrate unreasonable behaviour in this case.

5. Notwithstanding this, in her appeal form the appellant refers to evidence she is collecting. The appellant also says that, after having spoken to the planning officer, she understands that she can provide this evidence after submitting her appeal. Indeed, I have seen the letter from the Planning Inspectorate, dated 21 December 2021, notifying the appellant of the timetable for the submission of further evidence in her appeal. I also note the letter enclosing the Council's appeal statement, dated 2 February 2022, which advises the appellant of the date by which comments on the points raised should be sent. The appellant has been given clear instructions with regard to the timetable for the submission of her corroborative evidence.

6. The appellant has, however, failed to provide any evidence to support the brief claims that are set out in her appeal form. Without this evidence, I have found her appeal to be hopeless. I acknowledge that the appellant has not sought the services of a professional agent or consultant in submitting her appeal. Nevertheless, I can see from her appeal form that she is aware of the need to submit evidence in order to substantiate the claims she has made.

7. Paragraph 028 of the PPG informs that all parties are expected to behave reasonably to support an efficient and timely process. It advises that the aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case.

8. Having regard to all of the above, I find that the appellant has behaved unreasonably in failing to present full and detailed evidence to support her case. As a result of this, her appeal was hopeless. This has directly caused the Council to incur unnecessary or wasted expense in the appeal process, particularly in the preparation of its evidence in response to the grounds of appeal. Accordingly, an award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mrs Naseem Khan shall pay to Slough Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to Mrs Naseem Khan, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR