The Planning Inspectorate

Costs Decision

Site visit made on 30 January 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Costs application in relation to Appeal Ref: APP/M1710/C/22/3290764
Land at 16b The Green, Rowlands Castle PO9 6BN

- 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 East Hampshire District Council for a full award of costs against Mr Lee Slark.
- The appeal was against an enforcement notice alleging Without planning permission and within the last 4 years, unauthorised alterations to the roof comprising of dormer windows to the front and rear with a side gable and changes to the front bay window.

Decision

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

Reasons

2. The Planning Practice 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.

3. The basis for the Council's application is that the appellant has made an enforcement notice appeal on ground (a) in respect of a scheme which has already been dismissed at appeal[1] resulting in wasted expense for the Council.

4. The appellant submits that it is not unreasonable for them to exercise their right of appeal bearing in mind the draconian consequences of an enforcement notice. The appellant makes reference also to what it considers to be ambiguity in the 2021 Appeal decision as regards a fallback position to construct front and rear dormer windows pursuant to an earlier permission[2].

5. In the 2021 Appeal decision, the Inspector found that the gable conversion part of the appeal development was harmful to the character and appearance of the conservation area. As regards the dormer windows, the Inspector took into account the 2020 Permission fallback position and found that the front and rear dormer windows which were the subject of the 2021 Appeal did not have a 'meaningfully different' effect on the character and appearance of the conservation area.

6. In my assessment, I also took into consideration the 2020 Permission fallback position and found that the dormer windows which are the subject of the enforcement notice preserve the character and appearance of the conservation area. I found, like my colleague Inspector, that the gable conversion was

[1] Ref: APP/M1710/W/21/3270898 ('2021 Appeal')
[2] Ref: 58572 ('2020 Permission')

materially harmful and, in my assessment, the 2020 Permission fallback position did not offer any real weight in support of the gable conversion as this aspect of the development was not included in the 2020 Permission.

7. Since it was not clear on the available evidence that the dormers could physically remain in situ in the absence of the gable conversion, it was not appropriate for me to grant planning permission for these as part of the matters alleged. I did though vary the requirements pursuant to the ground (f) appeal to enable an alternative requirement to vary the development to accord with the 2020 Permission since this was a less onerous 'obvious alternative'. The appeal on ground (g) also succeeded to a limited extent allowing a longer compliance period.

8. Drawing these matters together, on the evidence before me, it was not unreasonable for the appellant to make a ground (a) appeal in respect of the dormer windows as my colleague Inspector had indicated that these did not harm the character and appearance of the CA. The 2021 Appeal Inspector clearly found that the gable conversion was unacceptable and no change to that aspect of the development was put forward. However, in the context of an enforcement notice appeal with draconian consequences, it was not unreasonable for the appellant to submit a ground (a) appeal for the gable conversion seeking to rely on case law arguments in relation to the significance of the 2020 Permission fallback position. The appeals on grounds (f) and (g) also succeeded such as to result in variations to the notice and so it was not unreasonable for the appellant to make these appeals either.

9. Since no unreasonable behaviour has been demonstrated, I do not need to consider the matter of wasted expense.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

V Bond

INSPECTOR