



Costs Decisions

Site visit made on 4 April 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2023

Costs application in relation to Appeal Ref: APP/Q4625/C/22/3297630 100 Monastery Drive, Solihull B91 1DP

- 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 Ms Valerie Ping for a full award of costs against Solihull Metropolitan Borough Council.
- The appeal was against an enforcement notice alleging without planning permission, alteration and additions to the dwelling house on the land, including front and rear extensions, a dormer roof extension, rooflights, changes to fenestration, removal of a chimney, porch addition/alterations, and external tiling.

Costs application in relation to Appeal Ref: APP/Q4625/W/22/3297624

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Ms Valerie Ping for a full award of costs against Solihull Metropolitan Borough Council.
- The appeal was against the refusal of planning permission for amendments to existing approved application PL/2021/00163/MINFHO.

Decision

1. The application for an award of full costs is refused for both appeals.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The claim is based on two issues, the first being that the planning application was refused by Planning Committee Members contrary to the recommendation of professional officers. The appellant considers the refusal reason and the reason for issuing the notice to have no foundation and the change from the original view of the officer that the development was policy compliant to being perceived by the Committee Members to conflict with planning policy amounts to unreasonable behaviour.
4. Secondly, that the enforcement notice was subsequently issued before any s78 appeal had been lodged or determined. The appellant claims that taking enforcement action was premature when the development could have succeeded on appeal of the planning refusal. The appellant considers that as a consequence of the council's behaviour the appellant has been put to the costs of having to challenge the refusal of the planning application and the enforcement notice.

5. It is a well-established and fundamental principle that Planning Committee Members are not bound by the advice of their officers and are entirely within their rights to exercise judgement and maintain objections where they have a legitimate basis from the evidence and information available to them. The fact that Planning Committee Members may have a different view to their professional officers and the appellant does not in itself constitute unreasonable behaviour. From the evidence presented, the decision by the Members was a reasoned one shown to be underpinned by the development plan and other material planning considerations. I do not find that the Council failed to properly evaluate the application or failed to properly consider the merits of the scheme.
6. Issuing an enforcement notice in these circumstances where a retrospective application has been refused, is at the discretion of the Council depending on the circumstances of the case. As it appears that the parties were not engaged in negotiations to determine a positive way forward, it would be considered acceptable to issue a notice following the refusal of the planning application. This also means that the two appeals can run concurrently, which is more efficient, likely to be less costly and ultimately timelier. Considering that the notice was appealed on ground (a) and ground (f) only, the case mostly reflected the appeal against the planning application refusal. In these circumstances I find that there would have been limited additional time spent on appealing the notice to be considered wasted or unnecessary expense.
7. Finally, the appellant claims unnecessary or wasted expense through applying for planning permission which was subsequently refused after having been told permission was not required. Furthermore, the expense of the application and subsequent appeal and costs associated with installing the panels if the appeal is dismissed following incorrect advice in writing from the LPA is cited as the reason for unnecessary or wasted expense.
8. While the appellant may have been advised planning permission was not required, it is not evident to what part of the development they are referring or by whom this was provided. The Council speculate that it could refer to an inquiry regarding dormer extensions prior to the submission of the planning application, however, in the absence of evidence, there is nothing to suggest that this information was indeed officially provided. Nevertheless, an appeal against an enforcement notice allows the appellant the opportunity to bring an appeal against grounds which include providing evidence that the development, or part of the development, does not constitute a breach of planning control. There was no such appeal in this case. On the second point, the reference in the claim to 'costs associated with installing the panels' is unexplained and it is not known what this is referring to as no details or evidence appear to be provided.
9. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified for either appeal.

S A Hanson

INSPECTOR