The Planning Inspectorate

# Costs Decision

Site visit made on 17 May 2023

**by E Griffin LLB Hons**

**an Inspector appointed by the Secretary of State**

**Decision date: 14th June 2023**

**Costs application in relation to Appeal Ref: APP/L3245/C/22/3306341**
**245 Wenlock Road, Shrewsbury, SY2 6SA**

- 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 G Corfield for a partial award of costs against Shropshire Council.
- The appeal was against an enforcement notice alleging the erection of a wall and a balustrade balcony

## Decision

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

## 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. Although described as a partial award of costs, the applicant has asked for an award of costs for the whole of the statutory process including submitting the appeal statement and supporting documentation and the expense of this costs application.

4. The applicant lodged separate appeals against the refusals to grant planning permission for the wall and balcony in June 2022. In August 2022, before the appeals were determined, the Council served an enforcement notice relating to both the wall and the balustrade balcony which led to this appeal. The planning appeals were determined in October 2022 resulting in planning permission being granted for the wall subject to conditions and the dismissal of the appeal in respect of the balustrade balcony.

5. The applicant considers that the Council should have waited for the planning appeal to be determined before serving an enforcement notice and had it done so, the notice and appeal would have been fundamentally different. The applicant relies upon the lack of reference in the Council's undated expediency report to the ongoing appeals to support his view that the Council did not act reasonably.

6. Reference is made to two paragraphs of the PPG. The first[1] refers to being at risk of an award of costs if an appeal could have been avoided by more diligent

[1] Paragraph: 048 Reference ID: 16-048-20140306

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

7. The second[2] refers to issuing a notice only when the local planning authority is satisfied that there has been a breach of planning control and it is expedient to serve a notice taking into account the provisions of the development plan and other material considerations.

8. In response, the Council states that there is nothing in government guidance or the Council's protocol which prevents the service of an enforcement notice whilst planning appeals are in progress. The Council thought that the enforcement appeals would run concurrently with the planning appeals. Further, in serving the enforcement notice, the Council was entitled to consider that the appeals could be dismissed. The Council states that it is likely that there would have been an appeal in any event as the applicant chose to pursue a ground (g) appeal.

9. Dealing with the PPG paragraphs in turn, the notice was accurate at the time of service as breaches of planning control had occurred as planning permission had not been granted. The reference in PPG to diligent investigation taking place does not mean that the Council had to wait for the outcomes of the planning appeals before serving a notice.

10. Secondly, the expediency report states that the Council considered that it was expedient to serve a notice and breaches of planning control had occurred. It is not clear why the expediency report I have been supplied with is undated or why there is no reference to the ongoing planning appeals. However, the absence of that information does not mean that the Council acted unreasonably. There is no requirement for a Council to wait for the outcome of any ongoing planning appeals before serving an enforcement notice. Serving an enforcement notice where there are existing planning appeals ongoing is therefore not in itself unreasonable behaviour.

11. In terms of wasted expense, the applicant's initial documents largely relied upon the planning statements that had already been prepared for the planning appeals. At the time that submission of formal statements were due in December 2022, the ground (a) appeals were not being pursued as the planning decisions had been issued in October 2022. It was the applicant's choice to continue with the appeal under ground (g) that was subsequently dismissed.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated and I therefore conclude that an award of costs is not warranted.

*E Griffin*

INSPECTOR

[2] Paragraph: 018 Reference ID: 17b-018-20140306