



Costs Decisions

Site visit made on 15 August 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2023

Costs applications in relation to Appeal Refs:

APP/X0360/C/22/3310836 & APP/X0360/C/22/3310837

112 Silverdale Road, Earley, Reading RG6 7LU

- The applications are 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 applications are made by Wokingham Borough Council for a full or partial award of costs against Mr Zahir Butt and Mrs. Ashi Shabir Butt.
- The appeals were against an enforcement notice alleging without planning permission, the erection of a rear extension and the erection of a raised platform comprising decking, railings, supporting stilts and stairs.

Decisions

1. The applications for awards of costs are refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). "Unreasonable" has its ordinary meaning, as established by the Courts¹. At paragraph 031, the PPG advises that unreasonable behaviour can be either procedural-relating to the process, or substantive-relating to the issues arising from the merits of the appeal.
3. The Council sought full or partial awards of their costs in these appeals on both substantive and procedural grounds. The applications were made in writing, in accordance with the PPG at paragraph 035. In summary, the Council argued that firstly, the appellants had persisted with ground (c) appeals notwithstanding being warned at an early stage that there was no realistic prospect of success on this ground. Secondly, the Council considered that information provided with the appellants' statement concerning the personal circumstances of one of the occupiers should have been disclosed at an earlier stage for the Council to consider.
4. The appellants' written submissions explained clearly why they felt that their appeals should succeed on ground (c). This was largely based on their interpretation of the approved drawings for an extension to the dwelling and an argument that any increase in size was immaterial. The onus is on the appellants to show why this ground of appeal should succeed. However, failure to discharge the burden of proof does not, in itself, mean that there has been unreasonable behaviour. I did not read the appellants' case as conceding that the extension was erected in breach of planning control. I found it necessary

¹ *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.

to consider the information provided in support of the appellants' case in relation to ground (c) in detail, before concluding that those appeals should fail. This suggests that the case advanced by the appellants was not entirely without an evidential foundation. Therefore, in my view the appellants had a respectable basis for pursuing this ground of appeal. I cannot be assured that the ground (c) appeals had no reasonable prospect of success. As a result, I am not persuaded that the appellants have acted in a manner similar to any of the examples of unreasonable behaviour relating to the substance of the matter at appeal set out in the PPG at paragraph 053, or in any other way which might be construed accordingly.

5. Moreover, the Council made a relatively brief response to the ground (c) appeals, in two pages of their statement. The bulk of the Council's statement dealt with the response to the deemed planning application arising from the ground (a) appeal and the ground (f) appeals. The proportion of work undertaken by the Council in formulating a response to the ground (c) appeals is therefore highly likely to have been limited in relation to the total amount of work involved in preparing the Council's case at appeal. Preparing the response to the ground (c) appeals should not have engaged Council resources for a significant amount of time. Therefore, the Council have not clearly shown how any alleged unreasonable behaviour on the part of the appellants has resulted in unnecessary or wasted expense being incurred in relation to the appeals in any event.
6. Introducing substantial new evidence at a late stage, necessitating extra expense in preparing for the appeal that would not otherwise have arisen, is one of the examples of unreasonable behaviour relating to the procedures of an appeal listed in paragraph 052 of the PPG. To my knowledge however, the Council did not provide further submissions at the final comments stage. Therefore, it is unclear how the information supplied with the ground (a) appeal concerning the personal circumstances of one of the residents could have resulted in the Council incurring unnecessary or wasted expense during the appeals process. In any event, it might be considered surprising that the Council have only become aware of this matter during the course of the appeals. It might also be argued that through undertaking a more detailed investigation, including by serving a Planning Contravention Notice for example, this matter might properly have been taken into account by the Council prior to enforcement action being taken.
7. Due to the above factors, the conditions for a full or partial award of costs, set out in the PPG at paragraph 030, have not been met in these appeals.

Conclusions

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR