The Planning Inspectorate

Costs Decision

Site visit made on 5 September 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Costs application in relation to Appeal Ref: APP/X0360/C/22/3303787
Land at 12 Culver Lane, Earley RG6 1DS

- 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 Wokingham Borough Council for a full or partial award of costs against Mr Mahboob Ali Khan.
- The appeal was against an enforcement notice alleging without planning permission, the erection of a building and associated hardstanding.

Decision

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

Reasons

2. Parties in planning appeals are normally expected to 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 Courts[1]. 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 either a full or partial award of their costs, on both procedural and substantive grounds. The application was made in writing, in accordance with the PPG at paragraph 035. In summary, the Council's case is that the appellant has behaved unreasonably, both procedurally and in relation to the substance of the matter at appeal by making an appeal on ground (e)-that copies of the notice were not served as required by s172 (2) of the Act, as well as by appealing on ground (b)-that the matters stated in the notice have not occurred, and; by making what amounted to a 'hidden' appeal on ground (c)-that the matter alleged in the notice did not constitute a breach of planning control.

4. At paragraph 052, the PPG makes it clear that appellants should behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. The paragraph goes on to list examples of behaviour which may give rise to an award of costs against an appellant on procedural grounds. Although not exhaustive, these include introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen and prolonging the proceedings by introducing a new ground of appeal or issue. At paragraph 053, the PPG stresses that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if their

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

appeal or ground of appeal had no reasonable prospect of succeeding. In a non-exhaustive list of examples of behaviour which may give rise to an award of costs against an appellant on substantive grounds, the PPG points out that in enforcement appeals the onus of proof on matters of fact is on the appellant.

5. The appellant provided detailed written submissions to support their appeal on ground (e), as well as in relation to the other grounds (a), (b) and (f). The grounds were all stated at the time the appeal was submitted. There was a clear explanation, by reference to relevant evidence, as to why the appellant considered that their appeal should succeed on ground (e) or, failing that, on one or more of the other grounds of appeal. Ultimately, since I shared the appellant's views on ground (e) it was not necessary to consider the other grounds of appeal. Had I done so however, a detailed response to the ground (b) points made by the appellant would have been required, thereby showing that the ground of appeal had some evidential foundation. Accordingly, in my view the appellant had a respectable basis for pursuing their appeal on all the grounds stated. I cannot be certain that there were any grounds on which the appeal was made where there was no realistic prospect of success.

6. Although the appellant argued that there was a 'fallback' position in terms of erecting a replacement incidental outbuilding as permitted development, the Council was mistaken to equate this to a hidden ground (c) appeal. The appellant clearly accepted that the structure did not benefit from planning permission. In any event, as the appellant's written statement of case, containing details of the fallback position, was submitted with the appeal form, it is unclear exactly why the Council considered that this was submitted at a late stage in the proceedings. In relation to this matter and the ground (e) appeal, as well as in the other grounds on which the appeal was made, the Council have failed to show how they have incurred extra expense in preparing for the appeal that would not otherwise have arisen.

7. As a result, I am not persuaded that the appellant has behaved in a manner similar to any of the examples of unreasonable behaviour relating to the procedures of the appeal set out in the PPG at paragraph 052, or in relation to the substance of the matter at appeal in the PPG at paragraph 053, or in any other way which might be construed accordingly. Making costs applications should not be a matter of routine; there needs to be good reasons for doing so. It is important to remember that persons served with copies of an enforcement notice have a right to make an appeal. An appellant should not be faced with the prospect of rebutting a costs application simply for appealing on the grounds that they consider most favourable for a successful outcome, provided their case is, as in this instance, supported by a body of relevant evidence. It follows that the conditions for an award of costs, set out in the PPG at paragraph 030, have not been met.

Conclusion

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