



Costs Decision

Site visit made on 20 February 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Costs application in relation to Appeal Refs: APP/K3605/C/23/3328934, APP/K3605/C/23/3328935

Land at 47 Thames Street, Weybridge, Surrey KT13 8JG

- 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 Richard Jones and Ms Michelle Jones for a full award of costs against Elmbridge Borough Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging the material change of use of a warehouse (B8) to a residential use (C3) and the raising of the height of a wall and installation of external plant.
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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 thrust of the applicant's case is that there was no apparent expedience to have enforced against them, given applications were submitted. The air source heat pump application should not have been held as invalid. It was also not until 9 March 2023 that they became aware the Council had concerns relating to the residential use of the property.
4. In respect of the wall, the Council had stated they had no documented evidence to suggest the wall was higher. During the appeal process, the Council then wrongly relied on photographs of interested parties and provided no evidence of their own. They had not remeasured the wall before taking enforcement action against plans deemed fit for purpose by a previous Inspector.
5. In respect of the change of use, the Council did not provide any contradictory evidence, nor did interested parties, when discussing the point of whether the applicant's have lived in the property since 1 February 2022. At the hearing the Council implied it was unusual that there was not more photographic evidence or that the applicant hadn't shared the experience with friends. Such evidence was however provided in a statutory declaration and there was no written rebuttal from the Council.

6. The notice as drafted was also unclear as to the number of alleged breaches and the steps were not clear and were excessive. Corrections to the notice were agreed at the hearing.
7. Given the above, and the severe lack of any strength or depth to the Council's defence in these appeals, the Council's decision to enforce was unreasonable. All the expenses incurred could have been avoided, minus that associated with the noise impact assessment, in defending these unnecessary appeals.
8. The Council respond by highlighting that the notice contains reasons as to why it was issued and the harm identified. The applicants accepted that they were using the flat roof without consent. Comments from interested parties showed there was harm. There was significant public interest which shows a clear public proportionality test.
9. The applicants had the right to appeal the invalidity of the application for the heat pumps but did not exercise this right.
10. The Council has visited the site and written to the applicants to advise that the change of use had not lawfully occurred, along with other breaches. It is therefore false to state that the applicants were not aware.
11. The Council does not accept that the applicants can rely upon a single email in respect of the wall as the concept of estoppel generally has no place in planning. A previous Inspector also states the evidence is that the wall as constructed appeared significantly higher than shown on plans, which is sufficient to show the wall height has increased.
12. The Council does not agree that the evidence shows the applicants had completed the change of use lawfully. The onus is on the applicants to provide such evidence.
13. The Council accept that the notice could have been more precise, but it was sufficiently clear. The discussion at the hearing did not provide changes to render the notice as illegible. The Council had not acted unreasonably in their actions during the consideration of this matter.
14. In reading my corresponding decision letter, it will be apparent that the ground (b) and (c) appeals in respect of the wall have failed. The onus to demonstrate that there has not been a breach in this respect rests firmly on the applicants.
15. In respect of the residential use, the applicant had been made aware of the Council's concerns, even though this could perhaps have been done sooner. The Council's stated position was that they did not dispute the residential occupation since 1 February 2022. Whilst it would then have been helpful to have detailed concerns raised in advance of the hearing, I did not find it to be unreasonable to highlight concerns, albeit in the event I afforded the statutory declarations considerable weight as they were unambiguous.
16. Whether or not the heat pump application should have been deemed as invalid is not a matter for me. In any event, it was an accepted breach of planning control, and the appeal provided a route for the planning merits to be considered. I am then not persuaded that doing so via the appeals before me led to unnecessary or wasted expense.

17. Whilst corrections were required to the notice, these were reasonably straightforward and were discussed during the hearing. The consequences of the fallback position were then not relevant to my assessment, albeit could have been addressed by those corrections and/or subsequent variations under the ground (f) appeal. I am not persuaded that the need to make these corrections amounts to unreasonable behaviour on the part of the Council.
18. The expediency of taking enforcement action is a matter for the Council. The Council then made relevant points and provided an adequate defence to the appeals. Consideration of the wall was a matter of planning judgement and the applicant's accepted that noise attenuation measures were necessary in respect of the heat pumps. Moreover, the evidence relating to the completion of the development pursuant to the prior approval was reasonably complex, and the Council made relevant points to challenge the applicant's case, even though in the event the ground (c) appeal succeeded.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR