The Planning Inspectorate

Costs Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Costs application in relation to Appeals Refs: APP/P4605/C/23/3325038 & APP/P4605/C/23/3325039
2 Bagshawe Croft, Birmingham B23 5YR

- 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 David Weldon and Mrs J Weldon for a full award of costs against Birmingham City Council.
- The appeal was against an enforcement notice alleging without planning permission the unauthorised erection of a single storey rear extension.

Decision

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

The Submissions for the Claimants

2. In essence, the claimants submit that the Council acted unreasonably in serving the enforcement notice. It is contended that the Council ignored the planning merits, demonstrated muddled and conflated thinking, ignored requests to discuss and negotiate and requiring removal of the extension is unreasonable. In addition, the Council confused the planning history regarding permitted development rights (PD). This resulted in unnecessary and wasted expense in having to make the appeals.

The Response by the Council

3. The Council with reference to email communication states that every effort was made to resolve the matter informally. The Council contend that it has acted in accordance with the Birmingham Local Enforcement Plan and the Enforcement Notice was issued with due regard to local and national planning policy and guidance within a reasonable timescale.

Reasons

4. 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. The PPG states that an enforcement notice should only be issued where the local planning authority is satisfied that it appears to them (my emphasis) that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations.

5. The evidence indicates that building works were undertaken between August 2021 and March 2022. The Council first became aware of these works in January 2022, visiting the site in February 2022. In November 2022, the Council wrote to the claimant informing them that planning permission was required for the extension. This letter explained the Council's reasons why it considered that planning permission was unlikely to be granted. The letter requested removal of the unauthorised development by December 2022. The enforcement notice was subsequently issued in May 2023.

6. I note that the issue regarding a Direction removing PD rights may have caused uncertainty for the claimant. However, this was clarified by the Council some two weeks prior to the notice being issued. Moreover, whether or not permitted development rights had been removed did not prevent the claimants from submitting a planning application. In any event, as detailed in my decision, both parties agree that the extension is not permitted development by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015.

7. I acknowledge that the personal circumstances of the claimant's planning agent caused inevitable delays, but I find no evidence before me that the Council acted unreasonably in issuing the enforcement notice in the timescale that it did. In this instance the Council made an assessment based on its own investigation which included a site visit and communication with the claimant. I do not find that the decision to issue a notice was taken lightly or without due consideration to the planning merits so as to amount to unreasonable behaviour. Moreover, the Council's submissions provided sufficient evidence to support its reasons for issuing the notice with reference to the development plan and other material considerations.

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

Elizabeth Jones

INSPECTOR