



Costs Decision

Site visit made on 16 April 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2024

Costs application in relation to Appeal Ref: APP/D1780/W/23/3329644 4 Orwell Close, Southampton SO16 9EP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Southampton City Council for a full award of costs against Mr H Singh.
- The appeal was against the refusal of planning permission for conversion of dwelling to form 1x 3-bedroom flat and 1x 1-bedroom flat.

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 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 a full award of costs on procedural 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 by making a planning appeal outside the 28-day time limit which follows the issuing of an enforcement notice. The appellant could have included ground (a) in their enforcement appeal, which would have allowed the planning merits of the matters alleged in the notice to be considered without recourse to the planning appeal. Late submission of the planning appeal is in the Council's view tantamount to prolonging the proceedings by introducing a new ground of appeal or issue.
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 delay in providing information or other failure to adhere to deadlines, as well as introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work

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

that would not otherwise have arisen and prolonging the proceedings by introducing a new ground of appeal or issue.

5. It is for the Planning Inspectorate to determine the validity of an appeal. However, that an applicant is able, on one occasion at least, to have the planning merits of their proposed development considered by an impartial party is in the interests of natural justice. In the circumstances, given that the appellant would otherwise have been denied such an opportunity, I do not think that their making of the planning appeal can be construed as unreasonable.
6. In addition, as far as I can see, the making of the planning appeal has not resulted in the Council undertaking extra work and incurring greater expense than would have been the case had the enforcement appeal been made on ground (a), as well as ground (b). In a ground (a) appeal the Council would still have had to defend the reasons for issuing the notice, which are substantially similar to those relating to the refusal of planning permission.
7. The enforcement appeal was made on 7 July 2023, the planning appeal being made just over two months later. It is not possible to be conclusive as to whether the enforcement appeal would have been determined any sooner, had a second appeal not also been made. Given the relatively limited period between submission of the two appeals however, in my view that would have been unlikely.
8. Moreover, the unauthorised use of the property as two flats has ceased following the issue of the enforcement notice. Therefore, even if the appellant is an experienced landlord and well-versed with the planning system, there is little obvious financial motive in delaying the enforcement notice from taking effect. In my view, the opposite is more likely; the appellant would want the appeals to be determined as soon as possible in order to potentially carry out the proposed development.
9. Consequently, I am not persuaded that the appellant has behaved in a manner similar to the examples of unreasonable behaviour relating to the procedures of the appeal set out in the PPG at paragraph 052, or otherwise in another way which might be construed accordingly. In any case, the Council has not shown how it has incurred any unnecessary or wasted expenditure as a result. It follows that the conditions for an award of costs, set out in the PPG at paragraph 030, have not been met.

Conclusion

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

Stephen Hawkins

INSPECTOR