The Planning Inspectorate

Costs Decisions

Hearing Held on 30 July 2024

Site visit made on 30 July 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Costs Application (A) in relation to Appeal Ref: APP/M2270/C/23/3323664
Land adjacent to Garden Cottage [OS Plot 3417], Blind Lane, Goudhurst, Cranbrook, Kent TN17 1JB

- 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 Andrew James Balch for a full award of costs against Tunbridge Wells Borough Council.
- The Hearing was in connection with an appeal against an enforcement notice alleging the construction of a timber framed building.

Costs Application (B)

- The application is made by Tunbridge Wells Borough Council for a partial award of costs against Mr Andrew James Balch.

Decisions (A and B)

1. The applications for an award of costs are 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.

Application A

3. The thrust of Application A is that the applicant has been endeavouring to work with the Council and held a site meeting. However, an enforcement notice was then issued, with no reason given for the action. Considerable cost and time could have been saved if discussions had continued. If the applicant is successful in the appeal, strong consideration should therefore be given to an award of costs for the appeal proceedings as the matter was capable of being otherwise settled.

4. The Council's response is that its decision to issue an enforcement notice is not considered to be grounds for costs. It is not unreasonable behaviour to take formal action against development that it considers unacceptable and contrary to the provisions of policy. The Council also does not accept the arguments being advanced at appeal, and which would have been the same arguments

relied upon had negotiations continued. It is therefore inevitable that an enforcement notice would have been issued.

5. In my view, whilst I appreciate the applicant was engaging with the Council and wished to continue to do so, the Council gave reasons for taking action in the enforcement notice and it was entitled to take this action given it considered the development to be contrary to policy. This does not amount to unreasonable behaviour, and it seems to me that an appeal was inevitable. Costs do not then automatically follow the outcome of a planning appeal.

Application B

6. The thrust of Application B is that the ground (c) appeal could not succeed as the building could not have been permitted development. The building was then only substantially complete in February 2022 and therefore the ground (d) appeal could not succeed either. Contradictory references were also made throughout the appellant's statement. This is all unreasonable and led to wasted expense.

7. The appellant's response is that there is not sufficient clarity within the relevant statutory provisions to prevent reliance upon them given the facts of this matter. There has not been persistence with a manifestly inaccurate reading of the GPDO. The appellant has then not made contradictory statements and queries why notice was not given of the intention to make a costs application. The Applicant has also been unwilling to enter into any form of discussions in this matter.

8. In my view, whilst the ground (c) appeal in respect of permitted development and the ground (d) appeal could not have reasonably succeeded, they were predicated on the appellant's arguments concerning the existence of a building in the same location since around 1968. I then did not accept those arguments, given the facts of the appeal, and so this could potentially be held to amount to unreasonable behaviour. However, even if that was the case, the arguments were dealt with quickly in both written evidence and during the Hearing. Moreover, an appeal was always going to have been lodged, given the other grounds of appeal, and I found the Hearing helpful and therefore necessary to understand the points of the parties and the respective responses. The appellant's evidence was then not particularly contradictory, given the photographs provided clearly demonstrated the works undertaken.

Conclusion (A and B)

9. 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