The Planning Inspectorate

Costs Decision

Site visit made on 8 July 2019

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2019

Costs application in relation to Appeal Ref: APP/Z4718/C/18/3218533-34
33 Wilshaw Road, Meltham, Huddersfield HD9 4DZ

- 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 Kirklees Metropolitan Borough Council for a [partial] [full] award of costs against Mr & Mrs A Smith.
- The appeal was against an enforcement notice alleging the unauthorised erection of rear extensions and timber outbuilding.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

3. Referring to the section 78 appeal dismissed in May 2018, and the second bullet point of paragraph 055 of what I take to be the PPG[1], the Council submit that there are no material differences in the development that is the subject of the enforcement appeal. On this basis, it is contended that in lodging the current appeal, the appellants have behaved unreasonably.

4. As the appeal against the enforcement notice is made on grounds (c), (f) and (g) of section 174(2) of the 1990 Act as well as ground (a), the scope of the current appeal is wider than that of the earlier section 78 appeal. As the appellants were reasonably entitled to pursue the three additional grounds of appeal referred to, all of which are supported by cogent reasoning, I do not consider this amounted to unreasonable behaviour on their part.

5. Turning to the ground (a) appeal, I acknowledge that when the appeal was lodged, the subject matter involved was essentially the same as that in the recently determined section 78 appeal. In addition, I have concluded that there has been no material change in the circumstances since the 78 decision was made. On the face of it therefore, there would appear to be strong grounds for concluding that this is just the type of instance that the second bullet of paragraph 055 of the PPG refers to. However, as I see it, the particular

[1] The Council use the term National Planning Policy Guidance

circumstances of this case are such that things are not quite so straightforward.

6. The manner in which the enforcement notice was drafted required the removal of not only the additional work not covered by the 2017 planning permission, but also the extensive works that had been approved. Faced with such a daunting, alarming and highly disruptive prospect, I can well understand why the appellants would have felt that, notwithstanding the 2018 appeal decision, lodging a further appeal could offer a possible solution to the very real, serious and, I am sure, highly stressful, dilemma they found themselves in.

7. When assessed against the guidance in the PPG in the cold light of day, I can appreciate why the Council equate revisiting the planning merits of the matter with unreasonableness on the part of the appellants. However, when all the matters are viewed in the round, I am inclined to regard the appellants' behaviour as having been born out of expediency as opposed to unreasonableness.

8. In the light of the foregoing, in this particular instance, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

D H Brier

Inspector