The Planning Inspectorate

Costs Decision

Inquiry Held on 3 October 2017

Site visit made on 3 October 2017

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 October 2017

Costs application in relation to Appeal Refs: APP/R3325/C/16/3158942 & 3158944
Land at East West House, Milborne Wick, Sherborne, Dorset DT9 4PW

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by South Somerset District Council for a full award of costs against Mr & Mrs Dickson.
- The inquiry was in connection with an appeal against an enforcement notice alleging, without planning permission, the installation of a decking platform and the erection of a tented structure.

Decision: the application is refused

The submissions for South Somerset District Council

1. The essence of the Council's application is that the appellants were slow to seek to regularise the breach of planning control. Furthermore, once received, the planning application was immediately withdrawn. A belated application for a Certificate of Lawful Use or Development was refused by the Council but not appealed, and yet despite this the appellant's appeals on ground (c) and (d) as part of this current appeal raise identical issues. Furthermore, the appellants repeatedly ignored officer advice to consider an alternative siting for the decking platform and the erection of a tented structure.

2. The Council also contend that the appellants have constantly changed their position in relation to the intended use of the decking platform and the tented structure. The appellants initially indicated that the tent was erected for private leisure purposes. However, once Council officers viewed inside the tent, the appellants' position on the use of the tent changed to use as a holiday let before then changing again to a purpose for demonstrating the appellants' interior design business. The Council therefore consider that the appellants have tactically shifted their position in an attempt to find an argument that might work in the circumstances facing them at the time.

3. The Council consider that the evidence submitted by the appellant's was very poor, with no grounds of appeal initially being specified and then, once the appeals on grounds (c) and (d) had been made, little evidence being submitted in support of their substantive grounds of appeal. Much of the evidence that was submitted related to ground (a), namely that planning permission ought to be granted, but no appeal on that ground had been made.

4. The Council consider that the appellants' behaviour has been unreasonable, and that the Council has incurred wasted and unnecessary expense in defending an appeal that could have been entirely avoided.

The response by Mr & Mrs Dickson

5. The first point made by Mr & Mrs Dickson is that the application for costs came very much as a surprise, and that at no point prior to the Inquiry did the Council indicate that the appellant's approach had been unreasonable.

6. The appellants dispute that the length of time taken to seek to regularise the breach of planning control was unusual, and explain that the planning application had been withdrawn following discussions with Councillor Lucy Wallace. The delay in submitting the application for a Certificate of Lawful Use or Development was due to a change in the appellant's e-mail address, but once this had been resolved things moved forward within a usual time-frame.

7. In relation to an alternative location for the decking and tented structure, the Council officers had made it clear that they could not promise that any such application would be successful. In those circumstances, the appellants were entitled to pursue an appeal before taking the structures down. In this context, the appellants consider that the Council's approach would lead to costs being awarded against appellants in every enforcement appeal.

8. The appellants maintain that their position has been consistent throughout, and that no time was wasted on considering ground (a) type arguments. The appellants point out that they submitted their evidence on time and that, whilst some evidence was submitted close to the start of the Inquiry, the Council also submitted new evidence once the Inquiry had opened. The appellants accept that it would have been unreasonable if they had not turned up at the Inquiry or had pursued an appeal on ground (a) at the Inquiry, but neither was the case. No new points were introduced at the Inquiry itself.

9. In summary, the appellants point out that an advocate had only recently been instructed but notwithstanding that they had tried to work through the planning process and have not acted unreasonably in doing so. They therefore consider that the Council are effectively seeking to punish them even though they have acted within the planning process.

Reasons

10. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only 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 Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice.

11. I do not consider that the appellants were unreasonably tardy in seeking to regularise the breach of planning control. I can also understand why, as people not familiar with the planning system, the appellants immediately withdrew the planning application having spoken with a local Councillor although, on my reading of the appellants' evidence, the reasons for doing so were in practice not soundly based. I have more difficulty in understanding why no appeal was lodged against the refusal of the application for a Certificate

of Lawful Use or Development, especially as the appellants' grounds for the present appeals raised identical issues. However, I again remind myself that the appellants were not professionally represented at that time.

12. I would not go so far as to say that the evidence submitted by the appellant's was very poor, as do the Council, but it was poorly structured and much of it related to matters that fall to be considered under an appeal on ground (a), a ground of appeal that had not been pleaded. That said, the appellant's evidence contained a reasonable summary of case law insofar as it relates to the issue of curtilage and was consistent in the stance that the tent was used for purposes incidental to the enjoyment of the dwellinghouse. I recognise that the appellants' initial position during the investigation of the breach of planning control may have been somewhat inconsistent and reactionary but, by the time that the appeal was submitted and right through the Inquiry, the appellants' position did remain consistent. The fact that I did not accept that position as being an accurate one in planning terms does not diminish the fact that the appellants were consistent in their evidence.

13. Having not been professionally represented during the early stages of the appeal process, the appellants did appoint an advocate, Mr Romaine, shortly before the Inquiry. This enabled a Statement of Common Ground to be prepared, through which a line of argument previously advanced by the appellants relating to whether the decking and tent constituted development under Section 55(1) of the Act was conceded. That line of argument held, on the face of it, very little prospect of succeeding. The removal of that line of argument therefore saved abortive Inquiry time. I also suspect that the appointment of Mr Romaine provided structure and focus to the appellants' case at the Inquiry itself, and in all likelihood this too saved Inquiry time.

14. I recognise that the appellants' behaviour during the initial investigation of the breach of planning control and the early stages of the appeal process did not constitute good practice, as advocated in the Planning Practice Guidance. In this respect, and with the benefit of hindsight, seeking professional representation at an earlier stage may have benefitted the appellants and enabled them to better navigate the planning process. But I come back to the fundamental point that the appellants were not familiar with the planning system when faced with the initial investigation of the breach of planning control. For that reason, I stop short of finding that the appellants' behaviour was unreasonable in the context of the Planning Practice Guidance. I am reinforced in that conclusion by the appellants' decision to appoint Mr Romaine before the Inquiry, and the subsequent savings in Inquiry time that resulted.

15. The Planning Practice Guidance clearly states that the right of appeal must be exercised reasonably. There is nothing unreasonable in the appellants' decision to exercise their right of appeal against the enforcement notice and, in the circumstances, the appellants' behaviour in pursuing that appeal was not unreasonable. In the absence of unreasonable behaviour, an award of costs is not justified.

Paul Freer

INSPECTOR