The Planning Inspectorate

Costs Decisions

Site visit made on 2 July 2018

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2018

Costs application A in relation to Appeal Ref: APP/B9506/C/17/3183979 Ria House, Ringwood Road, Woodlands, Southampton, SO40 7GX

- 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 New Forest National Park Authority for a full award of costs against Mr J Dent.
- The appeal was against an enforcement notice alleging the siting of a building.

Costs application B in relation to Appeal Ref: APP/B9506/C/17/3183979 Ria House, Ringwood Road, Woodlands, Southampton, SO40 7GX

- 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 J Dent for a full award of costs against New Forest National Park Authority.
- The appeal was against an enforcement notice alleging the siting of a building.

Decisions

Costs application A: The application for a partial award of costs succeeds.

Costs application B: The application for an award of costs fails.

Reasons

1. 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.

The Authority's application for costs

2. The Authority claims that the appellants have been unreasonable in providing different information for the purposes of a planning appeal to that provided to Ofsted and this represents concealment of the facts. The ground (a) appeal had no reasonable prospect of success. The ground (c) appeal was spurious as the building enforced against was not permitted development. The ground (f) appeal was an idle threat.

The Appellants' response

3. The portacabin is incidental to the primary residential use and intended as a games room. There is no recollection of telling Ofsted the portacabin would be a classroom. It is no longer the intention to make the home available to children. It is inappropriate to apply for costs on the basis that the use is not

incidental when the alleged use has never taken place. The Authority were asked to withdraw the notice but did not, leaving no option but to appeal. The grounds of appeal are reasonable and well made.

The Appellants' application for costs

4. The appellant has sought to remedy the breach by reducing the height of the portacabin and this course of action was agreed with the Enforcement Officer. Due to adverse weather conditions it only came within the height tolerances after the notice was served but the Authority declined to consider revoking the notice despite previous correspondence indicating such work would be welcome.

5. The authority has relied on discussions with third parties and on a use that the appellant states the building is not to be used for. This is unreasonable.

The Authority's response

6. The enforcement action taken was based on factual evidence following investigation. Following confirmation by a contractor that the portacabin was to be a classroom, the appellant put forward varying proposed uses to fit in with the Authority's interpretation of an incidental use. The appellant now introduces a use as a shared home for adults which may or may not be a C3 dwelling use.

7. Permitted development (PD) rights cannot be claimed retrospectively and the Authority has made it clear from the outset that the portacabin is not PD. The appellant proposed to reduce the height of the portacabin and the Authority suggested that any proposed works, to show genuine intent, should be carried out within 28 days, notwithstanding the issues relating to use.

Reasons

8. It is evident from the appellant's own admission that the portacabin did not meet the height limitations of Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) at the time that the Authority was investigating the alleged breach of planning control and at the time the notice was served. Rights under the GPDO cannot be claimed retrospectively, and the situation must be judged at the date the development was carried out. Whilst the appellant tried to remedy this by reducing the height of the building, this was too late in respect of the notice and the appellant, who was professionally represented should have been aware that an appeal on ground (c) was inevitably due to fail.

9. In enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant. The appellant is at risk of an award of costs if they persist with a ground of appeal against an enforcement notice when the facts clearly show otherwise, which in this case was to argue that the portacabin was permitted development. This represents unreasonable behaviour by the appellant that has led to unnecessary expense in the appeal process by the Authority.

10. The Authority alleges that the appellant has provided information that is shown to be untrue and has deliberately concealed relevant evidence about his intentions for the portacabin. Whether information has been deliberately concealed is insufficiently clear for me to draw a clear conclusion. What is readily apparent is that the appellant has used his right of appeal either to gain

a deemed planning permission or to reduce the requirements of the notice. I disagree that the ground (a) appeal did not have a realistic prospect of success. The fact that the ground (a) appeal failed was because I did not accept the appellant's planning arguments in the light of development plan policy and not because the appellant was being unreasonable in pursuing that ground of appeal.

11. The Authority is somewhat careless in its use of words to describe the appellant's fall back position as an idle threat as the appellant is perfectly entitled to rely on what he is lawfully entitled to do by way of implementing an extant planning permission, the LDC or through the exercise of PD rights in presenting his case.

12. The Authority was entitled to consider the expediency of taking enforcement action in the light of the information available to them, such as that provided by a contractor or Ofsted and this does not constitute unreasonable behaviour even if subsequent events may challenge the interpretation of such information.

13. I am puzzled why the Authority should have responded in positive terms to the appellant's offer to reduce the height of the portacabin when the Council's concern was not the height alone but also with the intended use. However, I do not regard this to represent unreasonable behavior although the Enforcement Officer's email of 3 May 2017 could have been expressed differently.

Conclusions

14. I therefore find that in Costs Application A, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

15. I also find that in Costs Application B, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr J Dent shall pay to New Forest National Park Authority the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the appeal on ground (c); such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. The New Forest National Park Authority is now invited to submit to Mr J Dent to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Peter Jarratt

Inspector