The Planning Inspectorate

Costs Decision

Hearing held on 28 January 2014

Site visit made on 28 January 2014

by Richard McCoy BSc MSc DipTP MRTPI IHBC

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

Decision date: 21 March 2014

Costs application in relation to Appeal Ref: APP/H1033/E/13/2196474
Meeting House, Low Leighton Road, New Mills, High Peak SK22 4LS

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
- The application is made by High Peak Borough Council for a full award of costs against Mrs Kate Fitzhugh.
- The hearing was against the refusal of listed building consent for the addition of a flue for a wood burning stove.

Decision

1. I refuse the application for an award of costs.

The submissions for High Peak Borough Council

2. This application is made with reference to paragraphs A2, A3, A12, A23, A24, A25, B3 and B13 of Circular 03/2009. The Council alleges that the pursuit of the appeal was unreasonable as there was no prospect of it succeeding. The proposal is clearly contrary to national policy relating to the conservation of the historic environment as set out in Section 12 of the National Planning Policy Framework (NPPF).

3. The appeal could have been avoided and has resulted in unnecessary wasted time. The use of the Hearing procedure is unjustified, particularly as the reasons given relate to a wine bar in the village which has no bearing on this appeal. The appellant was given an alternative solution in principle at the application stage but was reluctant to engage with the Council in a productive manner, regarding any further resubmission. This is contrary to the NPPF which encourages pre-application engagement and front loading.

4. By so doing the appellant acted unreasonably causing the Council to incur unnecessary expense and a full award of costs is justified.

The response by Mrs Kate Fitzhugh

5. I have attempted to navigate the appeals process alone. I had an agent at the application stage but could not afford to retain their services for the appeal submission. I was not aware of the written representations procedure which is why I requested a Hearing. It was not unreasonable to appeal the Council's decision as there is a sound argument against the Council's refusal reason. I want to give the listed building a sustainable future.

6. Had I been aware of the possibility of being liable for Costs I would not have started the appeal process. I have looked into alternative means of heating the space in discussion with the Council. I referred to other decisions of the Council in the area that have had a great affect on the living conditions of local residents such as permitting a wine bar. I wanted to set in context the frustration of trying to get approval for this relatively small scheme.

7. I am surprised to have got this far into the appeals process without being told that the Council would apply for costs. The process was hard for me to understand and it was not clear from the guidance that the written representations procedure was an alternative means of dealing with the matter or that costs would be greater for a Hearing.

8. Nevertheless, pursuing the appeal was not unreasonable and an award of costs is not justified.

Reasons

9. The application for costs was made and responded to on the basis of Circular 03/2009, which has been superseded by the Planning Practice Guidance (the guidance). However, having regard to the submissions put to me, I am satisfied that no party's interests will be prejudiced by my judging the application and response against the guidance.

10. The guidance advises that parties in planning appeals normally meet their own costs. It goes on to state that 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.

11. The matters outlined above involve a degree of judgement and while, on balance, I agree with the Council's decision, sufficiently robust evidence was submitted to show that the appellant did not exercise her right of appeal irresponsibly. As for seeking advice, it was confirmed at the Hearing that the Council's in principle view regarding a flue elsewhere on the building would have been that it might not meet with approval. Moreover, an email from the appellant's agent, dated 21 March 2013, to the Council demonstrates that alternative positions were considered. In which case, I consider the appellant did not act unreasonably and against the advice in the NPPF in respect of having pre application discussions with the Council. Furthermore, the reference to a wine bar, while not strictly of relevance, did not take up much time at the Hearing.

12. The Council argued that the appeal could have been dealt with by the written representations procedure, pointing out that people who are not familiar with the full extent of planning guidance and procedures should read and take note of standard informative material sent to them by The Planning Inspectorate. Whilst a hearing was requested by the appellant, this was considered appropriate by The Planning Inspectorate with whom responsibility for determining the procedure rests. Accordingly the choice of procedure has no bearing on an award of costs.

13. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the guidance has not been demonstrated and a full award of costs is not justified.

Richard McCoy

INSPECTOR