
Costs Decision

Hearing held and site visit made on 23 August 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 22 September 2016

Costs application in relation to Appeal Ref: APP/M1710/C/15/3141181 Headley Grange Farm, Liphook Road, Headley, Bordon, GU35 8NG

- The application is made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, ("the 1990 Act") and the Local Government Act 1972, Section 250(5).
 - The application is made by Orlanda Broom ("the Applicant") for a full award of costs against East Hampshire District Council ("the Council").
 - The Hearing was in connection with an appeal against an Enforcement Notice alleging the erection of a building for use as a dwelling house.
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Decision

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

The submissions for the Applicant

2. The costs application was submitted in writing and expanded upon orally at the Hearing.

The response by the Council

3. The response was made in writing.

Reasons

4. The Planning Practice Guidance ("the PPG") 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. I have also had regard to the various references by the Applicant and the Council to parts of the National Planning Policy Framework ("the NPPF") and the PPG.

Was the service of the Enforcement Notice unreasonable?

5. I do not agree with the Applicant that the Council failed to understand the amount of reconstruction work that was necessary to implement the planning permission which they granted under Reference 55393 ("the Planning Permission").
6. I have explained in my Appeal Decision that I agree with the Council that the development which the Enforcement Notice related to ("the Breach of Planning Control") did not accord with the Development Plan and it is the other material considerations that apply in this case. Whether the other material considerations should prevail over the Development Plan is a matter of planning judgement. The Council's decision was that planning permission

should not be granted for the Breach of Planning Control via the regularisation application. I do not consider that such a conclusion amounts to unreasonable behaviour by the Council.

7. I do not consider that the Council:

- a) Acted unfairly or unreasonably in coming to their view that the Development Plan should be adhered to in this case.
- b) Were not interested in finding a solution to the Applicant's problems – it was simply that the Council considered that the provisions of the Development Plan should be followed and that the other material considerations did not outweigh the Development Plan policies.

8. As far as the Council were concerned there was no solution to the Applicant's problems which would have allowed the Breach of Planning Control to remain.

9. I therefore conclude, for the reasons explained above, that I do not consider that the service of the Enforcement Notice was unreasonable.

Did the Council act disproportionately?

10. I am aware that:

- a) The Applicant and her family did not understand the consequences of inadvertently moving away from the Planning Permission.
- b) There were no objections from neighbours or the Parish Council to the regularisation application.
- c) The Applicant thought that because the resulting building would look exactly the same as that permitted by the Planning Permission then all that was required was the regularisation of the Breach of Planning Control.

11. However, I have explained in the Appeal Decision that the Breach of Planning Control alleged in the Enforcement Notice was contrary to the Development Plan. Whilst I know that the Applicant considers the Council to have slavishly adhered to the Development Plan I am of the view that their stance was understandable. Accordingly, I do not consider that they acted disproportionately in dealing with the Breach of Planning Control which they were faced with.

Is there a lack of demonstrable harm?

12. I consider that the Council's decision to refuse planning permission for the regularisation application and then issuing the Enforcement Notice relying on the policies of the Development Plan was not unreasonable behaviour. I am of the view that there is harm in not following the Development Plan because it can, in certain circumstances, lead to uncertainty. However, the facts in this case are such that a decision which is contrary to the Development Plan is warranted.

Was there a failure by the Council to look for and agree a solution?

13. I have dealt with this matter above. There is no convincing evidence before me that the Council encouraged the Applicant to submit an application to regularise the Breach of Planning Control or, even if there was encouragement

that encouragement was given under false pretences. The Council specifically stated that:

- a) They gave no positive encouragement for the submission of the regularisation application.
- b) They did not suggest to the Applicant that such an application would be approved.

14. Officers explained to the Applicant that a regularisation application was an option that was open to her but that it would be unlikely to be supported by Officers because of the different policies would applied to the regularisation application.
15. There is no definite evidence before me that the Council acted in a vexatious manner. Whilst I understand that the Applicant asked for the regularisation application to be determined by the Planning Committee I was advised that the application was dealt with in accordance with the Council's normal practices. The lead Councillor for the local area on planning matters was canvassed as to whether he wished the application to be presented to the Planning Committee. He did not consider that to be necessary. That does not mean that the Council acted unreasonably.
16. I am aware that the Council relied on Section 70C of the 1990 Act when they decided not to determine applications for planning permission for the Breach of Planning Control. I do not consider that those decisions were contrary to advice in paragraphs 187 or 207 of the NPPF.
17. Whilst the Applicant may have considered that these applications proposed a solution to the impasse it is clear to me that as far as the Council were concerned the fundamental issue was the conflict between the Breach of Planning Control and the provisions of the Development Plan.
18. I am aware of the PPG advice referred to in paragraph 4.5 of the Applicant's submissions which refers to encouraging revised planning applications which meet local objections. I consider that such an approach includes securing applications that comply with the Development Plan. The Breach of Planning Control does not achieve that objective or overcome that local objection.
19. I therefore conclude that the Council did not, in this case, fail to look for and agree a solution. As far as the Council were concerned there is an incompatibility between the Breach of Planning Control and the relevant policies of the Development Plan.

Was there a lack of balance in the Council's actions?

20. There is no evidence before me that the Council failed to apply a planning balance in this case. I am aware of the other appeal cases which the Council and the Applicant referred to. The Council explained in their evidence to the Hearing that the cases which the Applicant relied on to show that the Council allowed new buildings in lieu of conversions were materially different from the circumstances relating to the Breach of Planning Control at Headley Grange Farm and that each case must be judged on its own merits.
21. I therefore conclude that there was no lack of balance in the Council's actions in dealing with this case.

Was there unreasonable behaviour by the Council in relation to the Community Infrastructure Levy ("the CIL")?

22. The Applicant's concern is that the Council failed to keep her informed as to the progress and implications for her of the adoption of the CIL in the District. The Applicant acknowledges that there is little that I, as an appeal Inspector, can do about this. However, I do not agree with the Applicant that that Council's actions are grossly unfair or vexatious.

Overall Conclusions

23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Tim Belcher

Inspector