

Costs Decision

Site visit made on 27 September 2016.

by Martin H Seddon BSc DipTP MPhil MRTPI

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

Decision date: 12 October 2016

Appeal Ref: APP/Z2505/W/16/3150939

332a Willington Road, Kirton End, Boston, Lincolnshire, PE20 1NU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs Chris Fountain for a full award of costs against Boston Borough Council.
 - The appeal was made against the refusal of an application for the removal of conditions 3 and 4 of permission ref: B14/0250/88.
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Decision

1. The application for a full award of costs is dismissed.

Reasons

2. 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.
3. The appellant contends that the Council acted unreasonably by seeking to prevent development which should clearly be permitted, having regard to accordance with national policy, and other material considerations, including the Council's own planning policy and its decision to allow the change of use and conversion of an office close to the village of Kirton End. Reference is made to paragraphs 047-049 of the Planning Practice Guidance.
4. The appellant also contends that if the Council had inspected the site prior to making its decision it would have been clear that the dwelling is closely related to the village framework. The appellant considers that, but for this unreasonable behaviour, it would not have been necessary to undergo the costly process of an appeal.
5. The Council considers that it was possible for the planning case officer to fully assess the application, the location of the appeal site and the location of the dwelling in relation to surrounding properties and the village envelope at the time the site inspection was made. It advises that the application was assessed in accordance with S.38(6) of the Act and that in this instance the objectives of the National Planning Policy Framework (the Framework) were considered to be key material considerations in the determination of the application.
6. In the main appeal decision, I have explained why I consider that there are differences between the appeal proposal and the circumstances of application ref: B/14/0416 at the former Yew Tree Nurseries. I have also referred to the appellant's submissions regarding the housing land supply and the suggestion that a dwelling on the site would now be allowed without an agricultural occupancy condition. The appellant adds in the application for costs that the adopted Local Plan allocates a site for residential development in the village

and consequently saved Local Plan policy H1 accepts the principle of development in the village. The appellant considers that the bungalow is not in the 'open countryside'. However, the appeal site is clearly within the 'countryside' and outside the village envelope as defined on the adopted Local Plan proposals map.

7. The Council advises that the planning officer visited the appeal site on two occasions, initially to post the site notice and later to inspect the site. It is apparent that at the time of these visits the entrance to the site had Heras fencing in place and a greater degree of screening from hedging. Nevertheless, it would have been possible for the planning officer to see the general location of the bungalow and glasshouses from the site entrance, albeit somewhat restricted in view. Importantly the surroundings to the appeal site and its relationship with the village envelope would have been apparent. In the particular circumstances of this appeal I consider that the planning officer would have seen enough of the site and its surroundings to reach a recommendation regarding the proposed deletion of conditions 3 and 4.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

Martin H Seddon

INSPECTOR