

Costs Decision

Site visit made on 13 September 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 18 November 2016

Costs application in relation to Appeal Ref: APP/Q9495/X/15/3140914

The Bothy, The Schoolhouse and The Buttery, Woodend, Ulpha, Broughton-in-Furness, Cumbria LA20 6DY

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Paul Sandford for a full award of costs against Lake District National Park Authority.
 - The appeal was against the part refusal of a certificate of lawful use or development for use as three independent dwellings.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. National Planning Practice Guidance (NPPG) 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.
 3. Paragraph 49 of the NPPG lists examples of behaviour that may give rise to a substantive award of costs against a Local Planning Authority but it is stated that the list is not exhaustive. The list does not include the circumstance where an Authority fails to send an Officer to visually inspect an application site, particularly where a visual inspection might inform determination of the application and, possibly, result in a different decision being made. This circumstance, surprisingly, occurred in this case. A site visit is essential, in cases such as this, to assess the character of the land and to inspect the land itself, its means of enclosure, and its relationship to the dwellings that are associated with it.
 4. The failure of the Authority to send an Officer to conduct a site visit has resulted in their failure to substantiate their decision to part refuse the application. They claim that the Appellant has failed to submit sufficient evidence to justify allowing the application in full. But the Authority did not request any further information from the Applicant or inform him what type of evidence was needed to be submitted. The Authority did not state in their decision on the application the reasons for, effectively, reaching a split decision. The application included the land associated with the three buildings and there is nothing in the certificate or elsewhere to explain why this land was excluded from the certificate.
 5. The Authority did not, on receipt of a request by the Applicant's Agent, agree to issue an amended plan to include the land associated with the dwellings in the certificate. The only remedy to this decision was the submission of the appeal,
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which might not have been necessary if either a site visit had been carried out or the decision to issue a split decision had been satisfactorily substantiated in a communication to the Applicant. The Authority's questioning of the validity of the appeal and relevant case law aside, it was unreasonable of the Authority to determine the application without sending an Officer to visit the site. This resulted in their failure to substantiate or explain their reasons for excluding the land associated with the dwellings from the certificate and in the appeal.

Conclusion

6. The Authority acted unreasonably, initially, by not sending an Officer to visit the site to inform determination of the application. The application included land associated with the dwellings and the Authority also acted unreasonably by not explaining why this land was excluded from the certificate. The only recourse open to the Applicant, ultimately and as a result of this unreasonable behaviour, was the submission of the appeal. The application succeeds and a full award of costs against the Lake District National Park Authority is justified.

Costs Order

7. 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 the Lake District National Park Authority shall pay to Mr Paul Sandford, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

8. The applicant is now invited to submit to the Lake District National Park Authority, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Braithwaite

Inspector