

Costs Decision

Site visit made on 1 November 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 2 December 2016

Costs application in relation to Appeal Ref: APP/N2739/C/16/3145909 Land adjacent to Frog Hall, Hagg Lane, Hemingbrough, Selby

- 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 Nick Parkin for a full award of costs against Selby District Council.
 - The appeal was against an enforcement notice alleging the unauthorised erection of two unauthorised pigeon lofts on the Land.
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Decision

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

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. This claim for costs has been judged on its merits with all the evidence taken into account and with regard to the circumstances relating to the enforcement notice and to the appeal.
 4. The first two paragraphs of the costs application appear to broadly follow the wording found within paragraphs B40 and B34 respectively of Circular 03/2009 but this circular has been superseded by the Planning Practice Guidance. The application goes on to refer to paragraph 049 of the Planning Practice Guidance which lists examples of the types of behaviour that may give rise to a substantive award against a local planning authority. The appellant says his claim for costs is based one of the examples provided, namely vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 5. My reading of paragraph 4 of the enforcement notice is that it was not issued because of any potential adverse impact upon the character and appearance of the open countryside. I did not identify this matter as a main issue. It appears to have been introduced in the Council's written statement. Whilst this is not good practice, it is often the case that key
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additional matters are raised and they need to be covered accordingly. It is well established that the issue of character and appearance is one which involves matters of judgement. Although I took a different view to the one expressed in the Council's statement, this does not mean that the Council's stance was without foundation. At my site visit, I had to carefully study the matters raised here by making several journeys on foot and by car along Hull Road and Hagg Lane.

6. I do not find the Council's concerns about the residential amenities of the occupants of Frog Hall to rely on vague, generalised or inaccurate assertions. The Council was entitled to take into account the material that had been submitted over a considerable period of time by the occupiers of Frog Hall. It was apparent to me (as set out in the appeal decision) and to the Council's lead officer for environmental health and to the YES Consultancy appointed by the appellant that an unconditional planning permission could not be the way forward. The two planning conditions I imposed are aimed at protecting residential amenities. This indicates to me that valid amenity concerns had been identified objectively and that they needed to be addressed. The appellant's case, including the report prepared by YES Consultancy, did not flounder because it was able to and had to focus on the clear and specific concerns raised by the Council. Although overall I reached a balanced judgement in favour of the appellant's case, the Council was able to justify the view it reached concerning residential amenities and the decision to issue the enforcement notice was not an unreasonable one given the need put forward in local and national planning policies to achieve a good standard of amenity.
7. In any event, I have some sympathy with the position the Council found itself in. No scheme for the disposal of waste was ever agreed as required under application ref. 2013/1191/FUL. Application ref. 2015/0075/FUL is then refused and contrary to an indication given on behalf of the appellant, no appeal against that decision is lodged, yet further unauthorised loft building is carried out on site. The appellant failed to respond to the Council and this left the Council with little alternative but to take formal enforcement action against the unauthorised development. Serving a planning contravention notice would not have taken the Council very far forward, whilst relying on Part 3 of the Environmental Protection Act 1990 could easily have allowed harm to residential amenities to persist long before any statutory nuisance is ever declared or acted upon.
8. The Council has not exercised its planning judgement in an unreasonable manner with regard to the substance of the matter under appeal. The costs incurred by the appellant arising in the appeal were the normal costs involved when the right of appeal is exercised. In all, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. The claim for a full award of costs is not justified.

Andrew Dale

INSPECTOR