
Costs Decision

Site visit made on 24 January 2017

by V Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 1st February 2017

Costs application in relation to Appeal Ref: APP/P3420/W/3161622 Old GPO Exchange, Blore Road, Hales, TF9 2PR

- 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 Newcastle-Under-Lyme Borough Council for a full award of costs against Mr M. S. Cole.
 - The appeal was against the refusal of planning permission for the proposed conversion and alteration of existing disused telephone exchange into single dwelling.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. I shall therefore consider whether that has occurred in this case.
3. The Council have referred to the planning history of the appeal site which includes four planning applications for residential development, all of which were refused by the Council for reasons including highway safety and the effect on visually significant trees. One of those applications was the subject of an appeal¹ in 2016 which was dismissed on the basis of the Inspectors concerns relating to highway safety and the effect of the proposal on a visually significant oak tree.
4. Planning Practice Guidance (PPG) indicates that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal has no reasonable prospect of succeeding. It goes on to list examples of where this may occur, including where the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
5. The appeal proposal before me was a similar proposal on the same site as the scheme dismissed at appeal in 2016 and had been refused by the Council for similar reasons. However, the previous Inspector specifically referred to a lack of evidence in the form of a highway report and tree survey in her reasoning.

¹ APP/P3420/W/15/3135956 Decision date: February 2016

6. The appeal proposal before me differed from the previous scheme in that it was accompanied by this additional evidence, thereby seeking to overcome the previous Inspector's concerns. On that basis, I conclude that circumstances had materially changed and it was reasonable of the appellant to re-submit the application and appeal against the Council's decision so as to test the evidence at appeal.
7. Accordingly, I conclude that unreasonable behaviour leading to wasted expense has not been demonstrated.
8. For the reasons given above, I refuse the application for an award of costs.

V Lucas-Gosnold

INSPECTOR