

Costs Decision

Site visit made on 5 January 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 6 February 2017

Costs application in relation to Appeal Ref: APP/E2001/W/16/3160181 Red House Farm, Beverley Road, North Newbald YO43 4TJ

- 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 East Riding of Yorkshire Council for a full award of costs against Mr G Slinger.
 - The appeal was in connection with the grant of planning permission for the variation of condition 1 (holiday occupation only) on application 08/03411/VAR to allow for holiday occupation and short-term business / employment letting only'.
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Decision

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

Reasons

2. Paragraph 30 of the National Planning Practice Guidance (the Guidance) 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 53 of the Guidance sets out that an appellant may be at risk of an award of costs being made against them if an appeal or ground of appeal has no reasonable prospect of succeeding. Examples of where this may occur include where the proposal is clearly not in accordance with the development plan and no other material considerations, such as national planning policy, are put forward that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is supporting evidence.
 4. The Council stated that the appellant's unreasonable behaviour related to matters which the Council believed the appellant should have known, following advice given in respect of the application. The Council advised the appellant that, given its circumstances, the appeal had little prospect of succeeding. The application, as originally submitted, sought to remove conditions 1, 2 and 3 to allow the units on site to be occupied as permanent unrestricted dwellings. This was against advice provided by the Council which stated that removal of all three conditions would not be supported and would be contrary to development plan policy.
 5. The Council argued that, during the course of the application process, officers had discussions with the appellant who was again advised that the application
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- would not be supported. The appellant therefore requested that the application be amended to vary condition 1 only in order to allow holiday and short term business/employment letting and provide the appellant with some flexibility to improve the occupancy of the units and make the business economically viable. This approach was agreed with the appellant. As a result, condition 1 was varied and conditions 2 and 3 were re-imposed to prevent the units being occupied as permanent unrestricted dwellings.
6. The Council stated that the appellant should have been aware that there was little prospect of the appeal succeeding due to the advice provided. As such, the Council claim that the appellant acted unreasonably by appealing against the imposition of conditions which were requested by the appellant. Therefore, the Council has sought a full award of costs against the appellant as, in the Council's view, the appeal had little prospect of succeeding and should not have been submitted.
 7. The appellant argued that they had a right to appeal against the imposition of planning conditions as, in their view, the conditions would make the appellant's business unviable. Furthermore, the appellant stated that they believed there was a reasonable case to be made in support of the appeal being allowed.
 8. I acknowledge that Council officers made their position clear to the appellant on a number of occasions regarding the acceptability of the original application. Furthermore, I note that the subsequent variation of condition 1 was made at the request of the appellant, resulting in only one condition of the original approval being amended and that this was undertaken with the agreement of both parties.
 9. Notwithstanding the above, the right to appeal a planning decision is set out in Section 78 of the Town and Country Planning Act 1990 as amended. The appellant is therefore entitled to make an appeal against a planning decision. As a result, I find that the appellant has not erred from the prescribed appeal procedure and has exercised their right to appeal. Furthermore, whilst the Council considered that the appellant should not have made the appeal based on the advice given prior to, and during the application process, it is a matter for the appellant rather than the Council to decide. Despite the Council's advice at pre-application stage and during the application process, the appellant is not bound to follow that advice. Furthermore, the appellant believed that a reasonable case could be made to allow the appeal.
 10. Based on the evidence before me, I find that the appellant was entitled to make the appeal and followed the correct procedure in doing so. Furthermore, whilst I may have dismissed the appeal, in my view, the appellant provided adequate supporting evidence.
 11. Consequently, I conclude that unreasonable behaviour by the appellant resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. Therefore, the application for a full award of costs is refused.

Andrew McCormack

INSPECTOR