

Costs Decision

Hearing held on 21 March 2017

Site visit made on 20 March 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 27 April 2017

Costs application in relation to Appeal Refs: APP/J1860/C/16/3156800 and /W/16/3156801 land at Allsetts Farm, Broadwas, Worcester WR6 5NS

- 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 Paul Brooks for a full award of costs against Malvern Hills District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging the carrying out of operational development comprising the demolition of existing buildings and the partial construction of two buildings and refusal to grant planning permission for demolition of existing buildings and erection of 4 dwellings.
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Decision

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

The submissions for Mr Paul Brooks

2. Essentially, this application is based on the claim that the Council has not engaged with Mr Brooks in a proper or meaningful manner. It failed to follow its own enforcement policy and properly identify the breach of planning control. It refused planning permission without warning and failed to substantiate its objections.
3. The Council's poor management of the application directly contributed to the breach of control. Having informed the applicant of an intention to grant permission in February 2016 and instructed the preparation of a planning obligation, it took no management action following the departure of the case officer Sarah Jones circa April. Had the Council acted in a timely way to reconcile the memorandum of 15 February with the adoption of the local plan on 25th February 2016 and communicated with the applicant in terms subsequently appearing in the July decision letter, then Mr Brooks would not have commenced work and this enforcement appeal would not have been necessary.

The response on behalf of Malvern Hills District Council ['MHDC']

4. Two buildings had been partially constructed without planning permission. MHDC planning officers investigated alleged breach of planning control and it appeared two dwelling-houses had been partially constructed. It issued enforcement notice on that basis. The planning application was fully assessed. It was determined in accordance with the development plan policies. It was refused planning permission on the basis that the proposed development would cause planning harm.
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Reasons

5. 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. The Planning Practice Guidance (PPG) advises that, awards against local planning authority may be either procedural or substantive.
6. The planning application was submitted on 1 July 2015 and finally determined on 26 July 2016. It took considerable amount of time to come to a decision but there is a right of appeal against non-determination as soon as the relevant statutory period expires; Mr Brooks did not exercise that right of appeal. Once the planning application was ultimately determined, he exercised his right of appeal against refusal of permission. I find no evidence of deliberate delay tactics.
7. I appreciate lack of co-operation might have affected progress in determining the planning application. Mr Brooks' frustration and disappointment with the system was clearly demonstrated at the Hearing. The refusal of planning permission and issue of the enforcement notice simultaneously came as a total surprise, because positive feedback had been provided by officers; in fact, there is evidence of planning obligation being prepared and potentially agreed between Mr Brooks and the Council. Ultimately, however, the application was refused planning permission. The reasons stated in the decision notice are clear and precise and raise matters of acknowledged importance. The perceived conflict with local and national planning policy is set out.
8. The matters raised require an exercise of planning judgement. I have found favour with the Council's stance in terms of the proposed development's potential effect upon the character and appearance of the surrounding area, the location of the development and loss of employment land. There is conflict with local and national planning policy and the advanced other material considerations do not outweigh that material conflict. I consider that the Council submitted sufficient evidence to substantiate its opposition to the s.174(2)(a)(g) and s. 78 appeals. Given the significant degree of opposition to the development, the appeals were not avoidable.
9. Mr Brooks expresses disgust at the handling of enforcement matters and lack of apparent communication and co-operation about the perceived breach of planning control. He ultimately decided to start building operations and risked enforcement action; that is purely his responsibility.
10. I have disagreed with the description of the allegation in the issued notice nonetheless found favour with the Council's analysis. As a matter of fact unauthorised operational development had been carried out resulting in the partial construction of two buildings by the time the notice was issued and express planning permission is required and has not been obtained. Ultimately, expediency is purely a matter for the local planning authority. I consider MHDC has demonstrated it carried out sufficient prior investigations before taking enforcement action and, having regard to local plan policy, decided to issue the notice. The reasons for taking enforcement action are clearly set out in the notice and the Council submitted sufficient evidence in support.
11. In ground (a) appeal the Council rightly opposed the consideration of the alternative schemes for live-work units those developments are not part of the

matters alleged in the corrected notice. Mr Brooks may well be disappointed with my decision not to grant planning permission for partially completed building as that serves no planning purpose.

12. While there was some lack of clear communication between the appeal parties on certain issues prior to these appeals, I do not consider that the Council has behaved unreasonably in refusing planning permission and issuing the enforcement notice. There is no evidence to suggest it has delayed development that should have been granted planning permission. I have found no unreasonable behaviour in terms of procedural or substantive matters.
13. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been shown. An award of costs is unjustified in this case.

A U Ghafoor

Inspector