

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 [‘the Act’] and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Malvern Hills District Council for a full award of costs against Mr Paul Brooks.
 - 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 Malvern Hills District Council

2. The following key points form the basis of this application. Mr Brooks pursued a hopeless appeal under s. 174(2)(a) of the Act. The live-work proposal was formulated to be considered as part of the ground (a) appeal yet Mr Brooks’ planning agent had been made aware there was no power to consider these alternative schemes. Mr Brooks persisted and unduly delayed matters. He has caused the Council to seek legal opinion.

The response on behalf of Mr Paul Brooks

3. The enforcement notice was served in a rush and Mr Brooks decided to protect his interest in the land. Counsel opinion on the scope of the deemed application had been sought. It was decided to propose live-work unit as alternative to total demolition, because two substantially incomplete buildings had been erected, which could be completed as live-work units.

Reasons

4. On the balance of probabilities and for the following reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in this case.
 5. I note that the right of appeal should be exercised in a reasonable manner, but Mr Brooks protected his interest in the land by submitting an appeal against the enforcement notice.
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6. All of the evidence presented shows that officers were focused and fixated on the development being described as the partial construction of two dwelling-houses, given the proposed development comprising erection of four dwellings. I consider officers basically overlooked a fundamental question. The analysis should start from considering whether the alleged building operations fall within the scope of s. 55(1) and (1A) of the Act. If in the affirmative do the operations require express planning permission? Instead the focus was on partially constructed dwelling-houses. Nonetheless, it appeared to the Council that a breach had occurred because two partially completed buildings had, in fact, been constructed without benefit of planning permission. It decided it was expedient to take enforcement action, which is within its remit.
7. Clearly, Mr Brooks responded to matters stated in the issued enforcement notice. On the material facts and circumstances of the case, it was absolutely crucial to get the notice in order before the appeal was determined. At my instigation there was considerable debate as to the accuracy of the allegation and I do not consider the Hearing was unnecessarily prolonged. I have arrived at a firm conclusion that the issued notice should have alleged the carrying out of operational development resulting in the partial construction of two buildings.
8. Mr Brooks obtained professional advice and formulated a ground (a) case whereby planning permission was sought for alternative schemes taking into consideration local and national planning policy that is supportive of employment generation in rural areas. He also obtained legal opinion given the nature of the law on the scope of ground (a). My decision explains why I could not grant planning permission for any of the proposed live-work unit proposals as these schemes fall beyond the scope of ground (a). I have disagreed with the planning merits case for partially constructed buildings, nevertheless Mr Brooks was under a genuine impression there was a reasonable prospect of success. Sufficient evidence was submitted to substantiate all of the grounds of appeal by Mr Brooks in both Appeals.
9. I do not find any evidence of deliberate resistance to, or lack of co-operation with the Council in providing information. Delay had not been caused by reason of prevarication. Information had been provided during the Council's investigation, site visits and at planning application stage.
10. There was much debate as to the correct interpretation an application of relevant case law to the facts of this case. Acting contrary to well-established case law could amount to unreasonable behaviour. However where there is significant disagreement amongst experts, I do not consider taking a different opinion amounts to unreadableness.
11. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs, partial or full, is unjustified in this case.

A U Ghafoor

Inspector