
Costs Decision

Hearing held and site visit made on 26 April 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 05 May 2017

Costs application - Appeal Ref: APP/W3005/C/16/3153149 -151 Land north of Selston Road, Jacksdale, Nottingham, NG16 5HL

- 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 Ashfield District Council ("the Applicant") for a full award of costs against Gary Holmes, Ethan Gaskin and Neesha Cooper ("the Respondents").
 - The Hearing was in connection with an appeal against an Enforcement Notice alleging without planning permission: (i) The making of a material change of use from an agricultural/forestry use to a commercial use for the keeping of ponies and the stationing of a caravan used for residential purposes. (ii) The construction of a wooden field shelter and a wooden shed. (iii) The formation of a hard standing; and (iv) The construction of a palisade fence.
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Decision

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

The submissions for the Applicant

2. The costs application was submitted in writing at the Hearing.

The response by the Respondents

3. The response was made orally at the Hearing.

Reasons

4. The Planning Practice Guidance ("the PPG") 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.
5. The PPG explains that:
 - a) Awards against appellants may relate to the planning merits of the appeal.
 - b) The right of appeal should be exercised in a reasonable manner.
 - c) Appellants are at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding. This may occur when the development is clearly not in accordance with the development plan, and no other material considerations are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.

6. The Respondents gave oral evidence at the Hearing in support of their contention that it was necessary for Ethan Gaskin to live at the Appeal Site so that he could provide care to some of his horses and/or their foals during the night time. I have explained in my Appeal Decision why the Local Plan does not support this type of residential development in the Green Belt.
7. However, there is qualified support for this type of development in the National Planning Policy Framework ("the NPPF"). Again I have explained in the Appeal Decision why the development carried out at the Appeal Site is not supported by the NPPF. Whilst I am aware that little justification for the need to live at the Appeal Site was set out prior to the Hearing I do not consider that bringing these matters to my attention (many of which only came out through my questioning the Respondents) amounts to unreasonable behaviour on their part. On balance I am satisfied that there was adequate supporting evidence so as to make the Respondents arguments reasonable even though they did not convince me that on-site residential accommodation was justified.
8. I understand that the Respondents were aware that the Appeal Site is within the Green Belt at the time that the breaches of planning control were carried out. It is disappointing that they did not seek planning permission prior to carrying out the unlawful works. However, I have not been referred to any national guidance that carrying out development without the benefit of planning permission is unreasonable behaviour that would give rise to an award of costs. Neither, is it unreasonable behaviour to apply retrospectively for planning permission through the Ground (a) appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Tim Belcher

Inspector