Costs Decision

Hearing Held on 12 June 2018

Site visit made on 12 June 2018

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2018

Costs application in relation to Appeal Ref: APP/C2708/C/17/3180912
Willow Tree, Austwick, Lancaster, LA2 8AH

- 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 David Shackleton for a full award of costs against Craven District Council.
- The hearing was in connection with an appeal against an enforcement notice alleging the construction of a new building, namely a dwellinghouse, in the open countryside.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr David Shackleton (in brief)

2. Although a minor matter, the Council's Position Statement (PS), effectively its statement of case, was served some 5 months after the 5 January 2018 deadline.

3. The Council failed to present and pursue a proper case. It did not address grounds (b), (c) and (f); the fact that they were withdrawn at the hearing for procedural reasons did not mean they need not have been addressed. The Council, in effect, only addressed ground (a) verbally at the hearing. It was indecisive as to whether it considered the development to be a new build or a conversion. In the end, Ms Muscroft conceded that the development complied with Local Plan Policy H8.

4. The Council failed to review its position, as advised in the Planning Practice Guidance (PPG). When it granted planning permission in December 2017 for conversion of the appeal building to holiday accommodation, it could have withdrawn the notice. There was no further purpose to the notice as the appellant's planning permission limited the use to holiday purposes.

The response by Craven District Council (in brief)

5. The enforcement notice was overtaken by events. In December 2017, circumstances changed with the grant of planning permission. Discussions then took place, leading to the appellant's submission of a S.73 application to the Council for the removal of the condition limiting the use to holiday use. The withdrawal of the notice was considered but the appellant's threat of a costs application influenced the Council's decision to proceed to defend the appeal.

6. The Council sought a deferral of the hearing to enable the S73 application to be considered and, when this was denied, immediately prepared its PS. This did not contain any new evidence but added a draft list of conditions, as suggested by PINS. The late provision of the PS did not cause the appellant to incur costs.

7. On the substantive matters, the Council chose a reasonable and pragmatic way to argue its case. Based on a holistic view of 2 earlier refusals of planning permission for a dwelling at the appeal premises and the December 2017 approval for a unit of holiday accommodation, the Council's position relating to this site has been consistent and clear.

8. As it turned out, grounds (b), (c) and (f) were withdrawn early in the proceedings at the hearing.

Reasons

9. 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.

10. Parties are expected to behave reasonably to support a timely and efficient process, including meeting timetables. If, as stated, the PS was not an appeal statement, then the Council failed to submit an appeal statement at all. Although the PS was submitted unreasonably late in the day, it contained little of substance and it did not cause the appellant to incur significant additional expense. The submission of a draft list of conditions would have been expected of the Council as per normal procedure, whether in the PS or at the hearing itself.

11. The failure of the Council to address all 4 grounds of appeal, other than in a cursory manner, left the appellant unsure of the Council's case prior to attending the hearing. The Council claims that its position has been clear throughout. However, the allegation in the enforcement notice of June 2017 was the construction of a new building. Then, in December 2017, the Council granted planning permission for an identical physical form of development as a 'conversion of a partially rebuilt shippon'. The claim at the hearing that the Council's position was consistent, in only accepting holiday use on this site, is somewhat undermined by the acknowledgement at the hearing that this permission was granted contrary to officer recommendation.

12. Whilst I note that 3 of the 4 grounds of appeal were withdrawn at the hearing, the Council would not have known this in advance and the failure to address them is in my view unreasonable. It would, of course, have been open to the Council to submit that the appellant's late withdrawal of these grounds was itself unreasonable, were that to have been considered to be the case.

13. The Council's response to ground (a) was confused, in that it had some difficulty at the hearing deciding whether to address the development as a new build or a conversion, ultimately settling for the latter. Moreover, the Council conceded at the hearing that the development was compliant with Local Plan Policy H8. This was not entirely surprising given the 2016 permission for the conversion of the adjacent barn, a similar form of development in which officers reached a similar conclusion based on the same development plan and national policy background.

14. I find the failure to properly review the case and consider withdrawing the notice, following the December 2017 grant of planning permission to be surprising. The single requirement of the notice is to demolish the building. Yet the 2017 permission expressly allows for the retention of the building. At that point in time, the notice appears to have outlived its purpose. The only lawfully permitted use would have been for holiday purposes. Had it been occupied permanently, it would have been open to the Council to consider whether it was expedient to take enforcement action. Even at the hearing, I was informed that the requirement in the notice for demolition of the building remained the Council's position. The only reason for not withdrawing the notice appears to have been to avoid incurring a costs application. Yet the Council effectively added substantially to the costs of both parties by not withdrawing the notice and proceeding to the hearing.

15. I find the Council's behaviour in terms of failure to address the grounds of appeal either at all (grounds (b), (c) & (f)), or in an inconsistent manner, lacking in substance (ground (a)) to be unreasonable. I also find the Council's failure to properly review the case, and to continue to support a notice requiring the building to be demolished, to be unreasonable, given that it had granted permission for the building to be retained. This unreasonable behaviour has caused the appellant to incur unnecessary or wasted expense in the appeal process.

Costs Order

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Craven District Council shall pay to Mr David Shackleton, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. The applicant is now invited to submit to Craven District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B.S.Rogers

Inspector