



Costs Decisions

Site visit made on 4 June 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Costs application 1 in relation to Appeal A: APP/B2355/C/18/3213797 and Appeal B: APP/B2355/C/18/3213798

Land at Top O Th Bank Cottage, Tunstead, Bacup OL13 8NL

- 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 Rossendale Borough Council for a full award of costs against Ms Deborah Fisher and Mr Norman Hill.
 - The appeal was against an enforcement notice alleging Without the benefit of planning permission, the material change of use of the Land from agriculture to use as a livery business and storage purposes; including the erection of two rows of timber stables in connection with the livery business, a hard surfaced access track, storage of three container units and an additional insulated container storage unit, storage of a JCB digger and plant equipment, storage of scrap metal, metal fencing, wooden fence posts and miscellaneous stone and hardcore material.
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Costs application 2 in relation to Appeal A: APP/B2355/C/18/3213797 and Appeal B: APP/B2355/C/18/3213798

Land at Top O Th Bank Cottage, Tunstead, Bacup OL13 8NL

- 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 Ms Deborah Fisher and Mr Norman Hill for a full award of costs against Rossendale Borough Council.
 - The appeal was against an enforcement notice alleging Without the benefit of planning permission, the material change of use of the Land from agriculture to use as a livery business and storage purposes; including the erection of two rows of timber stables in connection with the livery business, a hard surfaced access track, storage of three container units and an additional insulated container storage unit, storage of a JCB digger and plant equipment, storage of scrap metal, metal fencing, wooden fence posts and miscellaneous stone and hardcore material.
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Costs Application 1

Decision

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

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably and the

¹ Reference ID: 16-030-20140306

unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. The Council says that, despite complaining about its handling of the case, the appellants failed to respond to its requests for meetings. However, there is no suggestion that the Council has been impeded in taking enforcement action or that public confidence in the planning system has been jeopardised. Concerns about a breakdown in communication are therefore a matter between the parties.
4. Paragraph 053 of the PPG² advises that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.
5. Irrespective of communication issues, the appellant was entitled to make a deemed application for planning permission for development already undertaken, through the ground (a) appeal. This in itself was not unreasonable behaviour.
6. The Council says that the appeals lodged on grounds (c) and (d) were unreasonable as they had no reasonable prospect of success. In terms of ground (c) I was not persuaded by the appellants' arguments as to what The Town and Country Planning (General Permitted Development) (England) Order 2015 allows to be stored on the land. However, and notwithstanding progress with flood protection measures on the site being delayed, this does not equate to the appellants being unable to substantiate their case on these grounds. Furthermore, the appellant was not actually relying on ground (c) to support its case for the retention of the stables, storage containers and access track in particular, which the Council say had no real prospect of succeeding on ground (c).
7. In terms of ground (d) I disagreed over what the evidence showed, on the balance of probability, in terms of the duration that various developments had existed on the site. However, again, this did not mean that the appellants were unable to substantiate their case on these grounds. I am not therefore persuaded that it can be said, unequivocally, that the appellants' case had no reasonable prospect of success.
8. I therefore find that unreasonable behaviour, based on a lack of co-operation or failure to accept that the development was obviously subject to planning control or not immune from enforcement action, resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Costs Application 2

Decision

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

Reasons

10. Paragraph 047 of the PPG³ advises that Local Planning Authorities are required to behave reasonably in relation to procedural matters at the appeal. An

² Reference ID: 16-053-20140306

³ Reference ID: 16-047-20140306

example of unreasonable behaviour would be a lack of co-operation with the other parties.

11. The appellants' case is essentially that the enforcement notice was served by the Council prematurely and unnecessarily, on the basis that it did not allow time for further discussion and negotiation regarding development on the site, in the context of their priority to secure the site against flooding.
12. The appellants say that had they been given more time, an application to regularise the use of the stables and for suitable alternative storage provision would have been made.
13. However even if an application was made, it cannot be certain that a satisfactory outcome would have been negotiated and the Council would have found the proposed development as a whole to be acceptable, given the reasons for the Notice being served. Whilst the appellants consider the requirements of the notice to be harsh and unreasonable, they have had the opportunity to fully argue their case through the appeal process.
14. I am mindful that the Government's position, as set out in the National Planning Policy Framework, is that effective enforcement is important to maintain public confidence in the planning system.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett

INSPECTOR