The Planning Inspectorate

Costs Decision

Inquiry Held on 24-25 July 2019
Site visit made on 26 July 2019

by Simon Hand MA

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

Decision date: 11 October 2019

Costs application in relation to Appeal Ref: APP/Y3940/C/18/3205597 Land known as Fairfield Farm, Fairfield Meadows, Southwick, Trowbridge, Wilts, BA14 9RT

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Wiltshire Council for a full award of costs against Mr Daniel Doel.
- The inquiry was in connection with an appeal against an enforcement notice alleging the unauthorised change of use of a building from an equestrian tack room to a building used for residential purpose.

Decision

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

The submissions for the Council

2. The appellant was advised by and represented by an experienced solicitor and Counsel. But all of the grounds of appeal were deficient or lacked evidence.

3. On ground (d) the appellant initially argued that he had lived in the chalet continuously since the previous occupant, Jane Doel moved out. This was then completely undermined by the late submission of a different case, that he had only begun living permanently at the chalet in 2014. Neither option had a reasonable prospect of success and the ground (d) should have been withdrawn.

4. On ground (a), the appellant's only evidence was 1 set of accounts and a description of what they would like to do given by Mrs Doel. All the other evidence, which was made to support previous planning applications was provided by the Council. The appellant's own agricultural witness accepted there was no financial or functional need to live on the site. No planning witness was called to provide evidence on the ground (a) and Mr Matthews (who was the appellant's planning witness for the ground (d) appeal) was not able articulate any policy arguments.

5. The ground (f) appeal failed to have regard to the GPDO or case law and was not dealt with in any cross-examination or closings. The ground (g) appeal was essentially a second bite at the ground (a) and was not substantiated.

The response by Daniel Doel

6. The Council's arguments on deception were without merit and Ms Stenning was not a convincing witness. The appellant supported his ground (d) appeal with three independent witnesses and any minor conflict within his case was caused by the factually complex history of the litigation. On the ground (a) the appellant had a professional witness whereas all the Council had done was repeat the 2016 exercise and reach the same conclusion. It was the Council who wasted time by questioning Mr Matthews about planning matters when he was only giving evidence on the ground (d).

7. On ground (f) a reasonable attempt was made to clarify the notice and on ground (g) it was reasonable to ask the Inspector to take into account the complications in complying.

Reasons

8. The Planning Practice Guidance 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.

9. On ground (d), the appellant did mount a case that he had occupied the chalet continuously since the Jane Doel left. This was his sworn statement to the LDC application and the case he advanced in this appeal. To that end he provided proofs from various witnesses to support it and it formed the basis of Mr Matthews evidence. Before the inquiry began, I wrote to the parties pointing out that the failure to return the chalet to a tack room in April 2012 and its continued occupation for residential purposes by Daniel Doel after that date amounted to a breach of the condition, as there had been no material change of use back to a tack room and then again back to a residential use. The required time limit was 10 years, and neither condition had been breached for that period. The ground (d) could not succeed and the appellant should consider withdrawing it.

10. In the event the appellant provided a supplementary proof, which changed his story, so that he now claimed not to have lived permanently in the chalet, but that it was turned back to a tack room for some 7 months in 2012, after which he began to occasionally live there. It was not permanently occupied as a dwelling until sometime in 2014. In opening the Inquiry, I outlined this change of case and hinted that it would be difficult to pursue successfully, but the appellant insisted on pressing on.

11. During the inquiry, key elements of the 4 year argument were undermined as the appellant admitted the tack had only been put in the chalet for show to fool Ms Stenning, and both he, his mother and his barrister in closings insisted he had actually lived there, albeit on and off, immediately from the date Jane Doel moved out. This called into question whether the tack room had ever actually recommenced. Generally the evidence was lacking in coherence and reliability. Also the Council had documentary evidence provided by Mrs Doel that Daniel had not moved into the chalet until 2015. Despite somewhat heroic attempts to do so, the appellant and his witnesses were not able to satisfactorily explain the various letters they had written to the Council.

12. The background litigation involving the various parties was indeed complex and protracted, leading to arguments and bitterness on both sides, but why this

should lead to Daniel, his mother and his friends forgetting where he was living is not explained.

13. It should have been obvious to any professional representative that this ground had no chance whatsoever of succeeding. The appellant was given ample opportunity to withdraw the ground and failed to do so. In my view continuing with this ground at the Inquiry was unreasonable.

14. The ground (a) appeal was, if anything, even less likely to succeed. No coherent evidence at all was provided that even came close to suggesting there was an essential need for a worker to live at the farm. Once the appellant's professional witness accepted that, the ground should have been withdrawn, but the lack of evidence was apparent from the beginning. The appellant also provided no-one to comment on the planning policy aspects of the case relying solely on the argument there was an essential need. Although nowhere explaining what this was. Despite that fact that the business plan didn't identify racehorse rehabilitation and it wasn't mentioned to their agricultural expert, it turned out this was an important element of their case. When pressed on this, Mr Matthews explained that 'the more you delve into the case the more you uncover'. However, a planning inquiry should not be a voyage of discovery into uncharted waters, no matter how interesting that might be. I gained the strong impression that far from revealing hidden truths, the appellant and his witnesses were making it up as they went along.

15. Again, it should have been clear to any professional advisor that this ground had no chance of success and that to pursue it was unreasonable.

16. On ground (f) the notice was not uncertain and required no clarification. The appellant's arguments were based on a misunderstanding of well known and well settled case law and practice and amounted to an unreasonable waste of time.

17. On Ground (g), no argument was provided as to why the appellant would need 3 years to vacate the chalet. Insofar as the appellant's argument can be given any rationale, it would seem to be based on the mistaken view that complying with the notice would require the closure of the livery business, or that for some reason the appellant should be allowed to stay on the site to run the business for up to three years. Why, was never explained. Pursuing this ground was unreasonable.

18. The appellant's response to the costs application largely dealt with the deception point but I have not needed to go into this. Despite the appellant willingly admitting that he set out to deceive Ms Stenning as to whether he was living in the chalet, and that both Daniel and his mother knew full well that according to the planning permission no-one was supposed to live in the chalet from April 2012 onwards, if there was any deception no advantage accrued from it. The appellant was also concerned to describe Ms Stenning as an unreliable witness, but I have not relied on her testimony in any event.

Conclusions

19. In my view, none of the grounds argued stood a reasonable chance of success. As the Council say, they were either wholly deficient or lacked evidential support. The appellant was professionally represented and so there is no

excuse for pursuing the appeal to an inquiry. This was unreasonable behaviour that caused the Council unnecessary expense.

20. Although neither party referred to this, all the parties are aware that originally the appeal was to be determined by the written representations' method. It was the Inspectorate that suggested an Inquiry should be held. At that time although the appellant's representations were somewhat unclear, it was obvious they directly contradicted the Council's version of events. Given the appellant stood to lose his home it was considered the evidence should be tested by way of cross-examination, which can only be achieved through the inquiry process. However, by the time the appellant's inquiry proofs were provided, and the Inspectorate wrote to the parties concerning the weakness of the ground (d), it should than have then been obvious the appeal as a whole could not succeed. I shall therefore limit the costs to those incurred after the date of the Inspectorate's letter sent by e-mail on 3rd July 2019.

Costs Order

21. 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 Daniel Doel shall pay to Wiltshire Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred after 3 July 2019. Such costs to be assessed in the Senior Courts Costs Office if not agreed.

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

Simon Hand

Inspector