



Costs Decision

Site visit made on 6 August 2019

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 November 2019

Costs application in relation to Appeal Ref: APP/P2935/W/19/3229609 Land North of Cheviot View, U4028 Netherton Burnfoot Junction to Follions, Netherton NE65 7EY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Tim Stienlet, Burnfoot Holiday Cottages for a full award of costs against Northumberland County Council.
 - The appeal was against the refusal of the Council to grant planning permission for the change of use of Office to Managers House.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, Paragraph 030 of the National Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Unreasonable behaviour can relate to procedural matters (i.e. the appeal process) or substantive matters (i.e. issues related to the planning merits of the appeal).
4. Paragraph 047 of the PPG provides a list of examples of behaviour by local planning authorities that may be deemed to be unreasonable in respect of procedural matters; the list includes examples such as: lack of cooperation with the other party or parties, delay in providing information, only supplying information at appeal when it was previously requested, and not provided, at application stage.
5. Paragraph 049 of the PPG provides a list of examples of behaviour by local planning authorities that may be deemed to be unreasonable in respect of the substance of the matter under appeal, by unreasonably refusing planning permission. The examples provided include: vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.
6. The applicant contends that the Council behaved unreasonably in refusing the application, as the reasons for refusal were unreasonable and without foundation, and that this has led to an unnecessary appeal. The Council considers that it processed and determined the application in a reasonable

manner with due regard to relevant policy and other material considerations, concluding that the proposed development would be inappropriate in its context.

7. In relation to substantive matters, the applicant states that the revision of the description of the development proposed from 'change of use of Office to Managers House' to 'erection of a new dwelling', which was requested by the Council, meant that the proposal was incorrectly assessed and refused on the wrong basis. Even though the applicant agreed to the revision, he contends that he was not fully informed of the implications of doing so. Furthermore, he states that, having regard to other applications on the same site, assessing it on this basis lacks consistency in approach by the Council.
8. I note the applicant's dissatisfaction in relation to these matters and the Council's lack of consistency in approach. However, as stated in the Appeal Decision, given that there are only foundations and a floor laid and drainage installed on site and that the permitted office use has not been implemented, I consider that the development proposed cannot be considered to be a change of use or reuse of an existing building. On this basis, I do not think that the Council acted unreasonably in terms of how it assessed the proposal and determined the application.
9. The applicant also asserts that all of the information provided in support of the proposal was not taken into account. It is evident that the supporting information provided as part of the application was referred to in the Council's delegated report and, as such, had been taken into account in the assessment of the proposal. In this respect, the Council did not behave unreasonably. However, it is also clear that the applicant did not know this as, when the appeal was submitted on 25 May 2019, he had only received a copy of the decision notice and not a copy of the delegated report. I will come to this matter later.
10. The applicant states that it was unreasonable for the Council to refuse the proposal on the basis of its impact on potentially contaminated land, as the foundations and floor of the building had already been installed, the pre-development conditions had been discharged and that this issue could have been dealt with by a condition. Information regarding this was requested by the Council at a very late stage and although a report was submitted it was not considered to be acceptable.
11. Given the proposed permanent residential use of the building and the date of the previous report and subsequent changes to legislation, I consider that it was valid for the Council to have some concerns about this issue. Although I concluded in the Appeal Decision that it seems likely that any risks could be adequately managed by imposing an appropriate condition, I consider that stating this as a reason for refusal does not constitute unreasonable behaviour by the Council.
12. With regard to procedural matters, the applicant refers to the delay in the application process due to the change in the description of the development proposed and the reconsultation. Although frustrating for the applicant, I do not consider this amounts to unreasonable behaviour by the Council.
13. The applicant also highlights the delay in the Council providing a copy of the delegated report. The application was refused on 5 December 2018 and it is

evident from email correspondence that the applicant was expecting to have access to, or receive, a copy of the delegated report to fully understand the reasons for refusal. However, due to what the Council acknowledge was an error, the report was not published on the Council's public access system until 29 May 2019. Furthermore, following an email to the Council by the applicant's agent on 14 May 2019, a reply with a link to the report was not sent until 25 June 2019.

14. The appeal was submitted on 25 May 2019 which meant that the applicant only had the reasons for refusal to base his full statement of case on. Even though the report was sent to the applicant during the course of the appeal, there was still a delay after requesting it.
15. Taking the above into account, I consider that the Council behaved unreasonably in respect of the delay in providing a copy of the delegated report. However, no substantive evidence has been submitted by the applicant regarding the detail of any unnecessary or wasted expense incurred during the appeal process as a direct result of this unreasonable behaviour. Therefore, I find that the case for an award of costs in this respect has not been adequately justified.

Conclusion

16. Taking into account the matters raised, the application for an award of costs is refused.

F Cullen

INSPECTOR