The Planning Inspectorate

Costs Decision

Site visit made on 23 June 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2020

Costs application in relation to Appeal Ref: APP/Q9495/C/20/3246700
Land at 4 Church Street, Ambleside LA22 0BU

- 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 Simon Ragg on behalf of Gladglider Ltd for a full award of costs against Lake District National Park Authority.
- The appeal was against an enforcement notice alleging a material change of use consisting of the sub-division of one dwellinghouse to form two units of residential accommodation.

Decision

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

Reasons

2. The appellant seeks a full award of costs in relation to the National Park Authority's (NPA) perceived unreasonable behaviour both on procedural and substantive grounds.

3. The Planning Practice Guide (PPG) advises that, irrespective of the outcome of the appeal, 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.

4. The basis of the appellant's claim is that the NPA did not serve a Planning Contravention Notice (PCN) and therefore did not know exactly how the site operated prior to serving the enforcement notice. If they had served a PCN they would have been able to determine that a breach of planning control hadn't taken place. Furthermore, they did not give the appellant adequate opportunity to submit a retrospective planning application which could have avoided the appeal. In addition, the expediency report which is relied on has errors in it and the reasons for issuing the notice are vague and lack supporting evidence or objective analysis.

5. Paragraph 048[1] of the PPG states that a local planning authority is at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate. However, a PCN is only one option in a range of investigative powers for planning enforcement purposes and is discretionary. The NPA are not required to serve a PCN and

[1] Paragraph: 048 16-048-20140306

they did set out clearly in their correspondence dated 5 December 2019 and subsequent email exchanges why they considered it necessary to serve the enforcement notice. They also stated why a planning application would not be supported and advised the appellant of his right of appeal. Public consultation has been carried out as part of the appeal process.

6. Paragraph 049[2] of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include, failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

7. I appreciate that the NPA relied on their expediency report in relation to the deemed planning permission. However, that report set out clearly the NPA reasons for issuing the enforcement notice. It was complete, precise, specific and relevant to the development. It also cited the policies which the NPA considered the development to be contrary to, as well as referring to other development plan policies. In addition, the NPA supported their reasons for issuing the notice with a statement of case and that statement addressed all of the appellant's grounds of appeal.

8. It will be seen from my decision that I agreed with the NPA that the sub-division of the dwelling to form two units of residential accommodation was breach of planning control which had taken place and was not acceptable. I also found that there were no conditions that could make the development acceptable. In this case the appeal could not therefore have been avoided.

9. Whilst I appreciate that the appellant would have liked to have had the opportunity to submit a retrospective planning application prior to the service of the enforcement notice, that behaviour has not resulted in any unnecessary or wasted expense in the appeal process.

10. I therefore find that unreasonable behaviour resulting in unnecessary expense as described in the PPG has not been demonstrated.

Elizabeth Pleasant

INSPECTOR

[2] Paragraph: 049 reference ID: 16-049-20140306