The Planning Inspectorate

Costs Decision

Site visit made on 15 September 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2020

Costs application in relation to Appeal Ref: APP/A0665/W/20/3251698
Dunham Barn, Longley Lane, Kelsall, Chester CW6 0TG

- 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 Adam Thwaites for a full award of costs against Cheshire West & Chester Council.
- The appeal was against the refusal to grant planning permission for the conversion of a barn into one dwelling without complying with a condition attached to planning permission Ref 18/03548/FUL, dated 1 May 2019.

Decision

1. The award of costs is refused.

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. Local planning authorities are at risk of an award of costs against them where there is evidence of preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The applicant's concerns are that the Council's approach to decision making with regard to the development plan and fallback position do not stand up to scrutiny and have prevented or delayed development which should clearly have been permitted.

4. The Council's delegated report confirms that, at the time of its determination of application 20/00501/S73, the works to form the balcony had already taken place. The evidence also indicates that the building was not occupied. In those circumstances, no fallback position arising from the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) existed at that time and therefore, consistent with my findings in relation to the effect of the development on the character and appearance of the barn, the proposal was deemed to conflict with the local development plan and there were no other material considerations at that time to outweigh the harm.

5. With regard to the extent of the reconstructive works, in the absence of prescribed limits, this is a matter of planning judgement on the individual circumstances of the case. The Council's evidence refers to a Dunham Barn Construction Report, dated 12/07/2019; however, this document did not form part of either of the main parties' evidence. Whilst my own planning

judgement, based on the evidence before me, concluded that the balance of works was not tipped against the development, I am unable to categorically determine as to whether the Council's judgement amounted to unreasonable behaviour, or not.

6. However, the evidence before me indicates that this decision was consistent with advice that had previously been provided by the Council in consideration of plan 3989_00_14 Rev B submitted by the applicant under application reference 18/03548/FUL. This culminated in approval of a revised plan.

7. Nevertheless, the development on the ground was varied to incorporate similar elements before submission of the application seeking to regularise the works. It appears to me that the decision did not therefore prevent or delay the development.

8. Accordingly, whilst I have subsequently found in favour of the development, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Hitchcock

INSPECTOR