



Costs Decision

Site visit made on 6 January 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 February 2021

Costs application in relation to Appeal Ref: APP/K1128/C/20/3257607 Land known as Moul Hill Barn, Salcombe TQ8 8LF

- 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 South Hams District Council for a full award of costs against Mrs Nichola Murray.
 - The appeal was against an enforcement notice alleging failure to comply with planning conditions 2 and 6 of planning permission ref APP/K1128/W/18/3210630 relating to the demolition and replacement of a camping barn.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice. Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal.
3. The PPG further states that the right of appeal should be exercised in a reasonable manner. 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.
4. The appeal was lodged on grounds (b) that the matters alleged had not occurred and (a) that planning permission ought to be granted or rather that the conditions ought to be discharged. In addition, grounds (f) and (g) were also pleaded although I did not need to consider those as I allowed the appeal on ground (a). There was also a claim by the appellant that the notice was a nullity which I disagreed with.
5. The Council's costs claim is provided within their statement of case. That was apparently submitted without the benefit of the Council having seen the appellant's full statement, only the initial grounds of appeal. It is acceptable within the enforcement appeal procedures for both main parties to make

representation at the '6 week' stage as they both did. There is then a further opportunity at the '9 week' stage for the main parties to comment on the opposition's statement and also the matters raised by third parties. The Council's claim however appears to relate, at least in part, to things that happened prior to the appeal being submitted. The PPG confirms that costs applications may relate to events before the appeal was lodged.

6. The appellant in my view made an error when they did not appeal against the Council's refusal of details that were submitted to satisfy condition 6 of the 2019 appeal decision. From that point, a breach of planning control existed with potentially severe implications due to the requirements of the condition. I have explained within the appeal decision why conditions of this type are sometimes necessary and it is usually to retain enforceability rather than as punitive measure.
7. The appellant could have attempted to rectify the situation by the submission of a further application to retain the development carried out without compliance with the planning condition (S73A). That may then have resulted in a further appeal if that application was refused by the Council. Given the Council's uncompromising position in this case, I suspect that an appeal would have been likely if the same details had been submitted again. The appellant, however, didn't do that and so the 'ball was within the Council's court' to confront matters. It is not clear from the submissions whether the Council or the appellant's advisors at that time suggested the submission of another application or whether it was ruled out due to an intransigent position being adopted by both parties.
8. A Planning Contravention Notice (PCN) was issued in March 2020. It is not clear what other communication was taking place at this time between the parties. The appellant responded within a month although the Council is critical of their general lack of engagement, it is not clarified in what way that was the case. The response to the PCN appears to indicate a misunderstanding of the consequences of not submitting an appeal with respect to the refusal of the floor layout submitted with respect to condition 6.
9. The enforcement notice was then issued in July 2020. An appeal was lodged with basic grounds of appeal at that stage. That was followed up by comprehensive statements both from a planning solicitor and a planning consultant.
10. Although until the point of the issue of the enforcement notice, the action by the appellant could be criticised, it seems clear to me that an appeal of some sort was always going to be likely. To that point, the appellant's position was unreasonable as a clear breach of planning control existed with respect to condition 6 even if the situation with respect to condition 2 was a matter that required a judgement to me made. From the evidence provided, it seems to me that an appeal would have occurred even if the appellant had acted more reasonably either in an appeal against the refusal of the submitted details or if a subsequent application had been made. The Council has not demonstrated that it has incurred any additional costs in the present appeal than it would have anyway had an appeal occurred earlier in the process.
11. The appellant was entitled to submit an appeal against the enforcement notice. Once it was submitted, the appellant met the requirements of the appeal timetable as explained within the "Procedural Guide Enforcement notice

appeals – England”. The Council did not review their costs application at the ‘9 week’ stage to clarify whether any matters raised by the appellant would make a difference to their claim. Rather, the Council state in their statement that the appellant providing submissions at the ‘6 week’ stage would be acting unreasonably as it would be fresh and substantial evidence at a late stage. I do not agree. The evidence submitted substantiates the initial grounds of appeal as the appellant is entitled to do.

12. The appellant’s submissions did make some legal assertions about the notice and in particular about the consequences of non-compliance with one of the conditions. The assertions were not unfounded and resulted from what had been said by the Council and the previous Inspector. I disagreed with those assertions but that they were not without some logical reasoning.
13. I dismissed the appeal on ground (b). That did require a degree of analysis of the term “camping barn”. The appellant submitted evidence about the variations in how such a term should be interpreted. That term had originally been used within the original planning permission relating to the building. That information was also of relevance to the ground (a) appeal, which I allowed on the merits of the case for the reasons set out in my appeal decision. Clearly therefore the appeal was not without foundation on these grounds.
14. The previous Inspector’s decision was issued only 2 years ago. The Council appear to be saying because planning conditions were imposed at that moment in time based upon the circumstances of that particular case, that those planning conditions cannot be reviewed. It has not been explained what evidence the Inspector who imposed the condition had before him and he was being asked to rule on different matters that were at that time in dispute. It was made clear in that decision that the use was not being re-assessed and as I state in my appeal decision, the Inspector was seeking in those circumstances to retain the status quo. In that respect, in my appeal decision I have necessarily dealt with a more fundamental re-appraisal of the development. In particular given the evidence that was submitted, I had to re-appraise whether the same use as was originally approved by the Council in 2014 could be undertaken given the present layout that I saw when I went inside the building.
15. The evidence submitted to support the appellant’s case was relevant and the appeal clearly had merits, particularly given my decision. I disagree with the Council’s view that the appeal had no prospects for success and it was not therefore unreasonably submitted.

Conclusion

16. The appellant has not acted unreasonably with respect to the procedural or substantive aspects of the appeal and the Council has not demonstrated that they have been put to unnecessary wasted expense due to any unreasonable behaviour that had occurred prior to the submission of the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

A Harwood

INSPECTOR