The Planning Inspectorate

Costs Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Costs application in relation to Appeal Ref: APP/G2713/X/20/3263330
The Stable, Green Bank Farm, Green Balk, Great Broughton TS9 7ED

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Derek McElvaney for a full award of costs against Hambleton District Council.
- The appeal was against the refusal of a certificate of lawful use or development for 'Existing use of a former stable as an independent dwellinghouse'.

Decision

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

Procedural Matters

2. The determination of the appeal to which the costs application relates turned on matters of law, and so it was not necessary for me to carry out a site inspection.

Reasons

3. The Planning Practice Guidance (PPG), at paragraph 049, 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. The PPG goes on to give several non-exhaustive examples of such unreasonable behaviour.

4. The appellant sets out a number of ways in which he contends that the Council has behaved unreasonably in relation to the consideration of the subject of the appeal. I shall address these matters in the order set out in the appellant's document.

Refusing to acknowledge or attach any weight to statutory declarations

5. The appellant contends that the planning officer's report entirely fails to acknowledge the statutory declarations of himself and his wife in support of their case. In view of the serious legal consequences of providing untruthful information in such documents, it is his view that the Council should have accorded the statements great weight in their balancing of the evidence. Had this happened, the certificate would have been granted and the need for the appeal would have been avoided.

6. Having been signed in July 2020, the statutory declarations were provided after the submission of the application in December 2019 and prior to the decision on 15 October 2020. The planning officer's report refers to 'signed statements' and the Council state that they acknowledged the later statutory declarations.

7. It is certainly the case that the Council have not explained in detail the weight that they have attributed to the statutory declarations. However, it is clear that they did not give them enough weight to favour the appellant's case and grant the certificate.

8. Although sworn evidence is to be given significant weight, it is well established that it is not in itself determinative. Weight may be affected by other factors such as precision and corroboration, and such evidence may be undermined by inconsistency.

9. The onus remains on the appellant to make their case. As may be seen from my decision, I have found that there is a substantial degree of inconsistency and contradiction within the evidence presented in relation to the appeal. Therefore, although the Council have not been explicit in their weighting of the statutory declarations, it is apparent they have taken them into account in reaching their decision.

Refusing to acknowledge or misrepresenting other evidence

10. The appellant refers to paragraph 5.6 of the planning officer's report which comments on the evidence provided with the application, stating that it is an inaccurate and incomplete representation of the evidence submitted. With regard to the address variations, I considered this matter within my main decision and accepted that the terms 'Stable/s' and 'Cottage' refer to the same building. However, it is not unreasonable for doubt to arise where a property appears to have several different names, and it is for the appellant to provide clarification on such a matter.

11. The cited paragraph refers to only some of the evidence comprising bills and invoices, although the Council have had a chance to review all the evidence through the appeal process. In their submissions, the Council largely rely on the officer's report, with some additional comments in their subsequent documents. They provide little in these submissions in terms of detailed commentary on the appellant's documentary evidence. However, on examination of these, I found there to be a gap of a number of months at the beginning of the four year period. Therefore, regardless of the weight or recognition given by the Council, there is a shortfall in the evidence that has gone against the appellant in terms of establishing continuous occupation of the appeal site.

12. The appellant states that the Council do not provide a rationale or justification for their position that five signed statements all attesting to the residence of the McElvaneys at the subject building add little to the balance of evidence. As these are not sworn statements, the weight that can be afforded to them is immediately lessened. The officer's report deals with these documents briefly. The Council's statement of case gives more explanation, saying that, for example, the statements are 'all very similar with very little (anecdotal) detail'. To my mind, the comments in the statement of case amount to a rationale and justification for the Council's position.

Failing to provide any evidence to the contrary of the appellant's evidence, which could justify discounting it, and not following established case law

13. Paragraph 006 of the PPG in relation to lawful development certificates states that, in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

14. The appellant cites the judgement in *Gabbitas v SSE and Newham LBC [1985] JPL 630*, which as he says, is a longstanding cornerstone of caselaw relating to lawful development certificates. It establishes that the appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

15. However, through the appeal process, the Council have produced several pieces of evidence that are at odds with the appellant's account, and which the appellant has not satisfactorily explained. That being the case, and in combination with the several months' gap alluded to above, I have been unable to conclude that the appellant's evidence is sufficiently precise and unambiguous so as to justify the grant of the certificate in this particular case. Therefore, the principles established by *Gabbitas* have not been offended in this instance, as the appellant has not discharged the onus that is upon him.

Subsequent to the refusal to grant a certificate, furnishing the appellant with further evidence in support of their case

16. After the refusal of the application on 15 October 2020, a Council Tax notice, dated 31 October 2020, was issued for Mr D. McElvaney and Mrs M. McElvaney at a property given as 'Converted Stables, Green Bank Farm, Great Broughton, Middlesbrough, TS9 7ED'. This provides a backdated bill covering the period from November 2015 onwards.

17. As noted in the main decision, it is not disputed that the building was fitted out for habitation towards the end of 2015. Although the bill dates match the time when the appellant states that he moved into the appeal site after the fitting out, it does not amount to key additional corroboration as the bill was presumably issued in response to the appellant's own representations on the matter. In any case, as Council Tax is liable to be paid on a residential property whether or not it is continually occupied, a retrospective Council Tax bill is not a decisive piece of evidence.

18. Although the appellant appears to frame the issuing of the Council Tax bill as contradictory to the refusal of the certificate, the Valuation Office Agency and Council Tax systems are separate to the planning system. Therefore, this cannot amount to unreasonable behaviour on the part of the Council.

Conclusion

19. The Council's submissions are somewhat too brief and lacking in detail in respect of their consideration of all of the appellant's evidence, and the weight given to the statutory declarations. However, even if this amounts to

unreasonable behaviour, it does not follow that the refusal of the certificate was unfounded. I have agreed with the Council's decision, and I am not able to conclude that the appeal and its attendant costs could have been avoided.

20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, an award of costs is not justified.

Elaine Gray

INSPECTOR