



Costs Decision

Inquiry Held on 27 & 28 July and 1 October 2021

Hearing Held on 27 July 2021

Site visit made on 28 July 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2021

Costs application in relation to Appeal Ref: APP/A0665/C/19/3226746 Land at Dones View Farm, Northwich Road, Dutton, Northwich

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Barry Michael Devine for a full award of costs against Cheshire West & Chester Council.
 - The Inquiry and Hearing were in connection with an appeal against an enforcement notice alleging the erection of a new building and the erection of a boundary wall and fence.
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Decision

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

The submissions for Mr Barry Michael Devine

2. The Council did not carry out adequate prior investigation and cannot counter the appellant's account of what happened to the building before 2018. It should have reconsidered its case before contesting the appeal.
3. When the Council viewed the building, it did so through the lens of a proposed residential use and failed to see a building some 125 years old.
4. The Council's approach was inconsistent, compared with Woodbank Farm. In that case, a building was demolished and rebuilt, but the enforcement investigation had a favourable outcome for the owner. The Council entered into dialogue with the owner of Woodbank Farm but did not do so with the appellant, unreasonably pursuing enforcement action instead.

The response by Cheshire West & Chester Council

5. The Council has provided abundant photographic and first-hand evidence to support its case, including aerial images and street view photographs pre-dating 2018. The evidence from 2018 alone is sufficient to demonstrate that the building is new and was not substantially completed 4 years before the notice was issued.
6. A building existed on the site for many years, but what the Council observed in 2018 is a new building. That new building is the subject of the notice.

7. The appellant's evidence has only strengthened and supported the Council's case, which therefore did not need to be reconsidered. Regardless of the quality of the Council's evidence, the appellant has not provided precise and unambiguous evidence of his own to support his appeal.
8. There is limited public information about the Council's investigation of Woodbank Farm, so the appellant's suggested comparison with this case is based on supposition and extrapolation. Matters of fact and degree are based upon the individual facts of the case and the appellant has not demonstrated that the two sites are comparable.

Reasons

9. The Planning Practice Guidance (the PPG) advises that costs may be awarded if a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. While considerable building operations, not least the construction of the eastern wing, had been undertaken beforehand it appears the Council did not know until it visited the site in 2018. That was in connection with a planning application¹ and the officer report, written in March or April 2018, records the Council's view that major reconstruction, resulting in a new building, had taken place. The building I saw is essentially the same and the great majority of fabric, including the eastern wing, the entire roof, all internal walls, and the inner skin of the outer walls of the northern and western wings, is new. In view of this, and the significant changes that had been made to the elevations, resulting in a building with the appearance of an incomplete dwelling, it was not unreasonable for the Council to take the view it did.
11. It is possible that greater engagement with the appellant might have provided the Council with a different perspective. However, it is questionable whether that would have resulted in a different outcome, given the ambiguities in the applicant's evidence noted in the Appeal Decision. On balance, it seems unlikely this would have altered the not unreasonable conclusion that was drawn from the appearance of the building and the extent of new fabric.
12. Limited information has been provided about Woodbank Farm and the Council's decision to grant planning permission for redevelopment there and no evidence of any dialogue with the owner of Woodbank Farm was presented. A copy of the officer report might have shed light on this, but it was not produced by either party. Accordingly, it has not been demonstrated that the different outcomes arise from inconsistency rather than disparate facts.

Conclusion

13. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Mark Harbottle

INSPECTOR

¹ 18/00384/FUL, refused 18 April 2018