



Costs Decision

Site visit made on 7 December 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2022

Costs application in relation to Appeal Ref: APP/U3935/C/21/3280902

Land at Farm Buildings at Eastrop Farm, Highworth, Swindon, SN6 7QQ

- 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 Nigel King of Eastrop Barns Ltd for a full award of costs against Swindon Borough Council.
 - The appeal was against an enforcement notice alleging the erection of three buildings as residential dwellings.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance on Appeals advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The unreasonable behaviour suggested by the applicant is in the refusal of the planning application for the buildings subject of the appeal and in serving an enforcement notice requiring their demolition. In summary, the applicant suggests this behaviour is unreasonable and has made the costs application on the following basis:
 - There is a severe lack of supply of housing land. The Council has not given due weight to the contribution the development makes towards addressing the shortfall.
 - The Council's decision in this case is inconsistent with others made to allocate and permit housing development in similar locations to the appeal site, including on land adjacent to the appeal site.
 - The suggested effect of the development on non-designated heritage assets is exaggerated by the Council and not supported by evidence.
 - The former buildings were derelict. The Council has not acknowledged the benefit of the scheme in enhancing the setting of the non-designated heritage assets.
 - The enforcement action was taken without consultation with the applicant.
4. All but the last of the applicant's reasons for the costs application listed above relate to the substance of the Council's case. As I have quashed the enforcement notice, I have not considered the grounds of appeal, including whether or not the location of the development is acceptable, having regard to

the Council's housing strategy and access to everyday services and facilities; the design of the development and its effect on any heritage assets; and whether there are any material considerations that outweigh any harm identified, including the housing land supply position. As such, I am unable to conclude that unreasonable behaviour on the part of the Council has been demonstrated in this regard.

5. In response to the applicant's suggestion that there had not been any consultation before enforcement action was taken, the Council has given a timeline from the start of its investigation to the point that the enforcement notice was issued. It suggests that this commenced in September 2020 and from then to December 2020 there were meetings and discussions with the applicant regarding the development, the extent of the work being undertaken, and the commencement of other development on site. The Council suggest that the applicant was given time to appoint other parties to assist with the matter.
6. The Council say that in January 2021 the appellant was advised that authority to issue an enforcement notice was sought from the planning committee. The enforcement notice was not, however, issued until the planning application for the development (submitted in April 2021) had been determined in July 2021. The Council has acknowledged the suggestions put forward to alter the development, but has given reasons why these do not mitigate the harm it says the development causes in this case.
7. Despite the applicant's initial claim that the notice was issued without any reference to the applicant or attempted negotiations, the evidence of the Council is that it was engaged with the applicant since the start of its investigation in September 2020, and that this continued through to the issue of the notice. The applicant's response to the above does not dispute the chronology of events set out by the Council. In view of this, it is more likely than not that the Council had engaged with the applicant prior to the issue of the enforcement notice and that enforcement action was not pursued without discussion and negotiation.
8. Having regard to all of the above, I am unable to conclude that unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated. Accordingly, an award for costs is not justified.

J Moss

INSPECTOR