
Costs Decision

Hearing Held on 25 May 2021 and 14 September 2021

Site visit made on 15 September 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2022

Costs application in relation to Appeal Ref: APP/R1038/W/20/3257059 Woodside, Hackney Lane, Barlow, Derbyshire S18 7TB

- 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 Mr Derek Mapp for a full award of costs against North East Derbyshire District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for application for the redevelopment of large bungalow and outbuildings for five small bungalows and related infrastructure (revised scheme of 19/00440/FL).
-

Decision

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

The submissions for Mr Derek Mapp

2. The applicant considers that the Council has acted contrary to and not followed well-established case law by not properly assessing whether the appeal site was previously developed land (PDL).

The response by North East Derbyshire District Council

3. The Council consider that it has taken account the relevant authorities including those cited by the appellant and other caselaw. It also considers that it has addressed the three key factors relevant to the issue identified in the cited caselaw i.e. physical layout, ownership (past and present) and use/function (past and present) together with all other relevant matters.

Reasons

4. The Planning Practice Guidance (the Guidance) 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. It also states that examples of unreasonable behaviour by local planning authorities include acting contrary to, or not following, well-established case law. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).

5. The established case law the applicant refers to are the Lowe¹ and Hampshire² judgement which hold that the assessment of whether a piece of forms part of a residential curtilage is a matter of planning judgement for the decision maker taking into account three key factors: physical layout; ownership (past and present) and the use/function of the land past and present.
6. The Council's Officer report does set out the reasons as to why it considered the proposed development unacceptable on these grounds and while it may have been beneficial for it to go into more detail on their assessment, it does contain the officer's overall conclusion that the bungalow and its garden constituted one enclosure and was in its view not within the residential curtilage with references to the physical layout of the site, its past history, use and ownership.
7. In any event, even if the Council did conclude that the appeal site was PDL, it does not necessarily mean that they would have found it acceptable in other respects or that it was not inappropriate development in the Green Belt. Indeed, the officer report also shows that the Council clearly considered the potential benefits of the proposal cited by the applicant, weighed them against the harm they identified, including an assessment of potential impact on the openness of the Green Belt, and in its planning judgement concluded that very special circumstances had not been demonstrated. Furthermore, according to the minutes of the planning committee meeting held on 11 February 2020, the applicant's agent attended the meeting and spoke in favour of the proposed development.
8. Moreover, from the evidence before me this issue appears to have been explained to the members of the Council's planning committee and it is apparent that all the other information and evidence submitted by the applicant including their letters which were received by the Council on 4 February 2020 and on 7 February 2020, was before them when they made their decision. The evidence also shows that the members of the committee appear to have undertaken a site visit prior to making their decision. Consequently, I am satisfied that the Council made its decision based on all the information and evidence before it including that submitted by the applicant on this issue.
9. Accordingly, I consider that the Council did follow and did not act contrary to well-established case law by not properly assessing whether the appeal site was previously developed land. Therefore, in my overall planning judgement, it appears to me that having regard to the evidence before me the Council adequately explained the reasoning behind their decision. As a result, I find that the Council had reasonable concerns about the impact of the proposed development which justified their decision. The refusal of planning permission in this case therefore does not constitute unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the Guidance.
10. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and that an award of costs is not justified.

C Coyne INSPECTOR

¹ Dennis Lowe v FSS and Tendring District Council [2003] EWHC 537 (Admin)

² Hampshire CC & the Open Spaces Society v SSSEFRA & Blackbushe Airport [2020] EWHC 159 (Admin)