The Planning Inspectorate

Costs Decisions

Inquiry held on 15 March 2022

Site visit made on 14 March 2022

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Costs application in relation to Appeal Refs: APP/X2410/C/19/3242127 & APP/X2410/C/19/3242128 (Application A)
Land at Fourways Farm, Narrow Lane, Wymeswold, Leicestershire LE12 6SD

- 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 Charnwood Borough Council for a full award of costs against Ms Helen Bexley and Mr Richard Yallop.
- The inquiry was in connection with an appeal against an enforcement notice alleging unauthorised change of use from agricultural equipment store and aircraft hangar to a mixed use of agricultural equipment store, aircraft hangar and residential dwelling.

Costs application in relation to Appeal Refs: APP/X2410/C/19/3242127 & APP/X2410/C/19/3242128 (Application B)
Land at Fourways Farm, Narrow Lane, Wymeswold, Leicestershire LE12 6SD

- 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 Ms Helen Bexley and Mr Richard Yallop for a full award of costs against Charnwood Borough Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging unauthorised change of use from agricultural equipment store and aircraft hangar to a mixed use of agricultural equipment store, aircraft hangar and residential dwelling.

Preliminary Matters

1. The costs applications were submitted in writing by the applicants before and at the Inquiry. The appeals cited above in the banner heading relate to the same enforcement notice. The issues raised in the costs applications are inter-related and to avoid duplication I have dealt with them together.

Decisions – both applications

2. The applications for an award of costs are refused.

Application A

The submissions for Charnwood Borough Council

3. The application was submitted in writing and supplemented orally, in summary, the applicant contends that a full award of costs is justified if I am satisfied that there has been deception as the lodging of the appeals would be unreasonable on that basis. An allegation of deception can be made on the basis of direct

evidence, or it can be and it is more commonly made through drawing inference from facts. The applicant also states that if I am not satisfied of deception the application should inevitably fail.

The response by Ms Bexley and Mr Yallop

4. The response was made in writing and supplemented orally and the substance of the response is that Ms Bexley and Mr Yallop rely on the lack of any direct evidence submitted by the Council to support the allegation of deception. Instead the Council rely on mere assumption and supposition as to the respondents conduct and intentions and their relationship with their planning consultants. Ms Bexley's concession in cross examination is not sufficient to demonstrate an intention to deceive.

Application B

The submissions for Ms Bexley and Mr Yallop

5. The application was submitted in writing and supplemented orally, in summary, the applicant contends that a full award of costs is justified as the absence of any direct evidence, cited above inn their response to Application A, the Council's attack on their credibility, character and integrity solely on the unsubstantiated ground of concealment is manifestly unreasonable.

The response by Charnwood Borough Council

6. The response was made orally and the substance of that response is that Ms Bexley made a concession in cross examination in relation to the last page of the second Design and Access Statement that it could be argued that it could be misleading. As above, an allegation of deception can be made on the basis of direct evidence or it can be and it is more commonly made through drawing inference from facts. The Council reasonably inferred from the facts of this case that positive deception had occurred.

Reasons – both applications

7. The Planning Practice Guidance advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

8. I have found that, as a matter of fact and degree, there was no concealment of the residential use element of the mixed use alleged in the enforcement notice (as corrected) by positive deception in matters integral to the planning process. As such, Ms Bexley and Mr Yallop did not act unreasonably in advancing their ground (d) appeals.

9. The Council did not have any direct evidence that Ms Bexley, Mr Yallop and/or their planning consultants had deliberately concealed the residential use at Fourways Farm. Its case was based on inferences derived from documentation that was submitted to support applications for planning permission and a Certificate of Lawful Development. There is no dispute that the documentation did not refer to the mezzanine floor accommodation within the hangar or the residential use that had occurred on the site. Moreover, Miss Bexley conceded in cross examination that a statement in one of those documents could be argued to be misleading.

10. Nevertheless, I have made clear my findings in respect of deliberate concealment and how this is tempered. In my substantive decision I did not agree with the Council. However, the interpretation of documentation and the inferences derived from evidence in a case where deliberate concealment/positive deception is alleged involves judgements in relation to matters of fact and degree that are relatively complex. The Council has set out its reasons for drawing the conclusions it has and has provided evidence to the Inquiry. In this case, I do not consider the Council's interpretation of the pertinent facts to be entirely without merit or in any way unreasonable.

Conclusion – both applications

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

D. Boffin

INSPECTOR