
Costs Decision

Hearing Held on 5 April 2022

Site visit made on 8 April 2022

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30/05/2022

Costs application in relation to Appeal Ref: APP/G5180/W/21/3273659 Land South of the Manor, New Barn Lane, Cudham, Westerham TN16 2HT

- 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 the Council of the London Borough of Bromley for a full award of costs against Divami Ltd.
 - The hearing was in connection with an appeal against the refusal of planning permission for change of use of existing agricultural building to Class C3 dwellinghouse and associated building works (56 day application for prior approval in respect of transport and highways, noise, contamination, flooding risks, location, siting and external appearance under Class Q of Part 3 of schedule 2 of the GPDO).
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Decision

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

The submissions for the Council of the London Borough of Bromley

2. The Council consider that the appellant acted unreasonably by providing information that is shown to be manifestly inaccurate or untrue, deliberately concealing relevant evidence at planning application stage or at a subsequent appeal and submitting an appeal that had no reasonable prospect of succeeding.

The response by Divami Ltd

3. The appellant considers that they acted reasonably by exercising their right to appeal the decision made by the Council. They also consider that they had a reasonable prospect of succeeding at appeal as they had submitted new evidence and that the nature of the appeal scheme was different to previous proposals at the appeal site.

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 appellants include providing information that is shown to be manifestly inaccurate or untrue, deliberately concealing relevant evidence at planning application stage or at a subsequent appeal and submitting a planning appeal that has no reasonable chance of success.

5. 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).
6. In making their original planning application the appellant submitted new evidence in support of their case i.e., the more recent signed statutory declarations. While I acknowledge the Council's point that in its opinion the appellant's interpretation of this new evidence was questionable, particularly in their attempts to reconcile apparent inconsistencies, the appellant has nonetheless provided some explanation as to how they arrived at their conclusion as outlined in their evidence. As a result, I am satisfied that this appears to have been a misunderstanding rather than an attempt by the appellant to be deliberately misleading.
7. In addition, it is reasonably clear that while the relationship between the main parties was not acrimonious, there would appear to have been significant areas of disagreement between them on several issues which came down to matters of fact and degree and planning judgement and that discussions of these issues may have been perceived in a negative manner by one side or the other.
8. The appeal process is there to ensure that where there are significant matters being disputed in this way that an independent arbiter can look at the case afresh and assess it objectively and impartially. Accordingly, I consider that the appellant acted reasonably in exercising their right to have their appeal heard by such an independent arbiter as is the reason for the existence of the planning appeal process.
9. Therefore, in my overall planning judgement, it appears to me that having regard to the evidence before me the appellant did not submit a planning appeal that had no reasonable chance of success. The submission of the appeal by the appellant 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