The Planning Inspectorate

Costs Decision

Site visit made on 25 May 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 June 2022

Costs application relating to Appeal Ref: APP/P0240/X/22/3292606
Land at Alma Farm, Alma Farm Road, Toddington, Dunstable, Bedfordshire LU5 6BG

- The application is made by Tony Courtenay under the Town and Country Planning Act 1990, sections 195 and 322 and Schedule 6, and the Local Government Act 1972, section 250(5), for a full award of costs against Central Bedfordshire Council.
- The appeal was against the refusal to grant a lawful development certificate for the continued use of land as residential garden serving Alma Farm.

Costs decision

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

Reasons for the costs decision

2. The Government's Planning Practice Guidance ("the Guidance") indicates that all the parties to an appeal are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, the party may be subject to an award of costs.

3. The applicant maintains that the Council acted unreasonably in their procedural handling of the lawful development certificate application, by refusing to discuss matters which were relevant to the determination of the application following a change in case officer and by failing to determine the application in the manner agreed by the previous case officer. Furthermore, that the Council failed to attempt to resolve any concerns they had and failed to notify him or his agents of the decision either by email or letter. The applicant states that the appeal would not have been necessary if the Council had acted proactively and claims all the appeal costs as an unnecessary expense.

4. Costs may only be awarded if the Council have behaved unreasonably and the unreasonable behaviour has directly caused the applicant to incur unnecessary or wasted expense in the appeal process. The Guidance indicates that costs applications may relate to events before an appeal was brought, but costs that are unrelated to the appeal are ineligible. It states that costs cannot be claimed for the period during the determination of an application, but adds that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the application can be taken into account in the Inspector's consideration of whether or not costs

should be awarded.

5. I have taken into account all the information that has been provided to me about the conduct of the parties in the period leading up to the decision to refuse the application for the certificate. The process was undoubtedly difficult and drawn-out, but I do not consider that there was unreasonable behaviour by the Council within the meaning of the Guidance. The onus was always on the applicant to make out the case for the certificate by providing the Council with information satisfying them of the lawfulness of the use. Ultimately, the Council considered all the information provided to them and decided on the balance of probability that it was not sufficient. The application was therefore refused as required by section 191(4).

6. The application for costs states (in its concluding paragraph 5.1) that the reason for refusal was unfounded because evidence was lacking to corroborate the Council's opinion that the land had been used as an allotment and because the land had been wrongly described as such in the enforcement notice. I have considered whether there was unreasonable behaviour by the Council in relation to these matters. In the appeal decision, I found the Council's case about the existence of an allotment to be unconvincing. However, the Council did not behave unreasonably in relying on this description, since it had been included in the enforcement notice and had apparently not been queried during the enforcement notice appeal process.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated. An award of costs is not justified and the application has therefore been refused.

D.A.Hainsworth

INSPECTOR