The Planning Inspectorate

Costs Decision

Site visit made on 27 September 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 19 October 2022

Costs application in relation to Appeal Ref: APP/N2345/C/22/3292539 Lewth Farm, Lewth Lane, Woodplumpton, Preston PR4 0TD and land adjoining Lewth Farm, Lewth Lane and lying to the north of Cinder Lane, Woodplumpton, Preston PR4 0TD

- 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 Preston City Council for a full award of costs against Mr Karl Ince.
- The appeal was against an enforcement notice alleging the material change of use of the Building from a lawful agricultural use to a commercial use for the storage and distribution of toys in connection with a business that sells toys.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable is used in its ordinary meaning as established in the courts[1] and not the stricter public definition of "Wednesbury" unreasonable. Examples of unreasonable behaviour that may lead to an award of costs against appeal parties are given in the PPG and may concern an appellant pursuing a clear "no hope" case.

3. The Council has stated that there has been unnecessary and wasted expense in the appeal procedure because the development the subject of this enforcement appeal has previously been the subject of two planning applications, both which were refused planning permission and dismissed at appeal. Their claim for costs is made on the basis that as part of the previous appeal[2] the appellant submitted a planning statement and transport technical note which were considered by the Council and Inspector in determining the planning application and appeal, respectively.

4. The current appeal is made on ground (a) only, that planning permission should be granted for what is alleged in the notice. The appellant has submitted the same evidence as he provided previously and there is no new information. Therefore, the Council argues that he is simply seeking to re-run previous arguments in the hope of an alternative decision being reached. Since

[1] Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774
[2] APP/N2345/W/21/3273208

there is no reasonable prospect of the appeal succeeding, the Council argues that this demonstrates unreasonable behaviour by the appellant which has caused unnecessary and wasted expense being incurred by the local planning authority.

5. The appellant maintains that it is his right to make an appeal and goes on to state that the Council previously granted planning permission for the agricultural building and that consent carried no restrictive conditions that would limit or indeed describe the building's use – it simply gives permission for an agricultural building and the appellant is using it in accordance with the permission granted. An argument such as this that there has not been a breach of planning control (because planning permission has already been granted) should be pursued under ground (c) in an appeal against an enforcement notice. Since there is no ground (c) appeal and no indication that such an argument is being pursued in the main appeal documentation (as opposed to the costs submission), that is not for me to determine at this stage.

6. The fact of the matter remains that the appellant has chosen to pursue this current appeal on ground (a) only and has made his submissions accordingly. It is clear to me that the same arguments are being run using the same evidence as with the previous appeal against the Council's decision to refuse planning permission for the material change of use of the building for storage and distribution. That appeal was dismissed for reasons relating to the failure to provide a safe and suitable access for all users.

7. The enforcement notice the subject of the current appeal is for the same development previously refused and the appellant has chosen to rely on the same evidence that was previously rejected by an Inspector and an appeal dismissed. No attempt has been made to gather further evidence in support of the deemed planning application and therefore it is effectively a replica re-run of the previously rejected appeal arguments. That being the case, the appellant must have foreseen that the current appeal on ground (a) had little chance of success and has been submitted in the hope of a different conclusion being reached on the same evidence.

8. In these circumstances it is unreasonable for the appellant to have pursued the appeal on ground (a) alone and I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr Karl Ince shall pay to Preston City Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to Mr Karl Ince, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A A Phillips INSPECTOR