



Costs Decision

Inquiry Held on 1 November 2022

Site visit made on 1 November 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 November 2022

Costs application in relation to Appeal Ref: APP/C1625/C/21/3286145 Land at Ashen Plains, Waterley Bottom, North Nibley, Gloucestershire GL11 6AD

- 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 Mr D Orchard for a full award of costs against Stroud District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: Without planning permission, the erection of two agricultural buildings, denoted as 'Barn 2' and 'Barn 3' and shown outlined in black on the attached plans.
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Decision

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

Procedural Matter

2. Due to time constraints at the Inquiry, it was agreed that the Appellant's application for costs could be submitted in writing. A timetable was agreed at the Inquiry for the application to be submitted and responses made. The timetable has been adhered to.

The submissions for Mr D Orchard

3. The Appellant submits that a full award of costs is justified for the costs he has incurred in this appeal. If all of the reasons for his cost's application are not made out, the Appellant seeks an appropriate partial award of costs.
4. Firstly, the Appellant contends that it was unreasonable for the Council to withdraw Barn 3 from the alleged breach of planning control only six weeks before the Inquiry, when evidence of its existence and immunity from enforcement action had been produced by the Appellant almost a year before, and just after the enforcement notice was served. Failure to co-operate and review the notice until just before the Inquiry and failure to agree a timely Statement of Common Ground (SOCG), required the Appellant to incur expense in preparing evidence for its appeal on ground (d).
5. Secondly, the Appellant contends that the Council failed to produce evidence to substantiate their case, including their reasons for issuing the enforcement notice. In particular, no expert evidence was produced to refute the

Appellant's evidence on agricultural need, nor any evidence produced to demonstrate landscape harm.

6. Finally, the Council produced late evidence prior to the Inquiry as part of a rebuttal statement. Although the 78 pages of supporting evidence were subsequently withdrawn, the Appellant had to take time to review them and incurred wasted time and expense in doing so.

The response by Stroud District Council

7. The Council contend that they advised the Appellant in September 2022 that they wished to amend the enforcement notice to remove Barn 3 from the allegation and did so as soon as they were able to review the evidence independently. This was prior to proofs of evidence being exchanged and thus minimising the inconvenience to the Appellant. Furthermore, the Council dispute that they failed to agree the SOCG in a timely manner and the Appellant has not demonstrated any wasted costs incurred in this regard.
8. The Council accepts that it did not take on board Officer advice when considering the planning merits of Barn 2. However, the Council is not bound by that advice and is free to reach its own decision based on the material before it. The Council was not required to produce 'expert agricultural evidence' to support their case and the issue of 'essential need' for Barn 2 is a matter of planning judgement on which the Council's witness was well placed to provide evidence to the Inquiry on behalf of the Council. Failure to demonstrate 'essential need' would bring the continued presence of Barn 2 within the Cotswold Area of Outstanding Natural Beauty in conflict with development plan policy.
9. Finally, although the Council accept that they included a bundle of documents as part of a rebuttal statement, they advise that this was down to an administrative error and did not seek to rely on the bundle at the Inquiry. The Appellant accepted that the bundle contained little new evidence and the Council refute that the Appellant was required to spend a significant amount of time or wasted expense in reviewing that evidence.

Reasons

10. 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.
11. The PPG advises that a local planning authority may be at risk of an award of costs being made against them either in relation to procedural matters, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It advises that the Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances¹.
12. Examples of behaviour that may give rise to a procedural award against a local planning authority include: lack of co-operation with the other party; not agreeing a statement of common ground in a timely manner; introducing fresh or substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; and

¹ PPG, Paragraph:046 Reference ID: 16-046-20140306

withdrawing an enforcement notice without good reason². Furthermore, the PPG advises that a Council may be at risk of an award of costs in relation to enforcement action if they do not carry out adequate prior investigation and it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate³.

13. In relation to substantive matters, the PPG advises that a local planning authority may be at risk of an award of costs for reasons including: preventing or delaying development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and not reviewing their case promptly following the lodging of an appeal⁴.
14. The enforcement notice was issued on 30 September 2021. On 7 October 2021 the Appellant wrote to the Council to query the inclusion of Barn 3 within the notice and included two Google Earth images, dated 2014 and 2017 to demonstrate that the building had been in existence for over 4 years and should therefore be immune from enforcement action. The Appellant requested that the Council amend and re-issue the enforcement notice with Barn 3 removed from it to avoid work at an enforcement appeal.
15. In response, the Council said they were unable to corroborate the images and had their own evidence which suggested the Appellant's images may not be accurate. The Council suggested that further information should be submitted as part of the appeal process. The Appellant immediately responded with further photographic evidence, supplying a date stamped image of the building taken in March 2016 and a further image taken in October 2021 for comparison purposes. However, the LPA in their response, dated 14 October 2021, advised that the evidence should be submitted as part of the appeal process which they would review in due course⁵.
16. The Appellant's evidence on ground (d) was again submitted as part of its Statement of Case in January 2022. However, it was not until September 2022, just prior to proofs of evidence being exchanged, that the Council accepted that Barn 3 was immune from enforcement action and requested that the Inspector amend the notice accordingly. I have had regard to the Council's response that they were awaiting the installation of technology to certify the Google images. However, it seems to me that the images and dated photographs of Barn 3 were clear and unambiguous when initially provided to the Council in October 2021. Although in October 2021 the Council suggested they had photographic evidence that suggested a later date of construction, this was not provided at any time during the appeal process, and it remains unclear as to what prior investigation led to Barn 3 being included in the enforcement notice.
17. The Appellant made significant efforts to engage with the Council at an early stage in the appeal to avoid an appeal on ground (d) in relation to Barn 3.

² PPG, Paragraph: 047 Reference ID: 16-047-20140306

³ PPG, Paragraph: 048 Reference ID: 16-048-20140306

⁴ PPG, Paragraph: 049 Reference ID: 16-049-20140306

⁵ Appendix 20, Appellant's Appeal Bundle.

From the evidence before me, it was unreasonable for the Council to wait until just before proofs of evidence were exchanged to withdraw Barn 3 from the notice. Had the Council positively responded to the Appellant's engagement and reviewed their evidence and the notice at an earlier stage the appeal process in relation to Barn 3 and the costs associated with the appeal on ground (d) could have been avoided.

18. The enforcement notice was issued following the Council's decision to refuse an application to retain Barn 2 on the land⁶, as they did not accept their Officer's advice that an essential agricultural need for the building had been demonstrated. The Council's view was that in the absence of a demonstrable agricultural need, the unauthorised development conflicted with the provisions of the development plan.
19. The Appellant's application for planning permission to retain Barn 2 had been supported by an agricultural appraisal report undertaken by the Appellant's specialist agricultural advisor. In consideration of that application, the Council appointed their own agricultural specialist to undertake a review of the submitted appraisal report. The Council's specialist concluded, following a response from the Appellant to provide further information, that there was a demonstrable need for Barn 2 as part of the Appellant's sustainable farming enterprise. It was on this basis that the Council's Officer recommended that Barn 2 should be granted planning permission.
20. The Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached and an enforcement notice subsequently issued, then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
21. The only evidence in support of the Council's decision to issue an enforcement notice on appeal was provided by the Council's Elected Member and Chair of the Council's Development Control Committee. He accepted in cross-examination that he had no agricultural expertise, but stated that he was appearing at the Inquiry to advise on the concerns and reasons why the Council did not consider an essential need for Barn 2 had been demonstrated and the enforcement notice issued. In essence, the Council believed that the other buildings on the site, including the stable block and Barn 1 were sufficient to support the Appellant's agricultural enterprise.
22. Agricultural need is to an extent quantifiable, and certainly a matter which requires a level of expert knowledge. It is less a matter of judgement. The Council's evidence at appeal has not attempted to counter the evidence provided by the Appellant's agricultural appraisal, nor indeed to set out why it did not agree with its own independent agricultural advisor's findings. The Council did not explain how the stables and Barn 1 could meet a demonstrable need for additional accommodation for livestock, when the expert evidence was clear that these buildings were not available, or in the case of Barn 1 unsuitable. Furthermore, if the Elected Members had inspected the stable building during their site visit, they would have seen that it is fully occupied in accordance with its permitted equestrian use.

⁶ LPA Ref: S.19/2712/FUL)

23. The Council did not bring any evidence in relation to landscape impact and their witness accepted during cross examination that if an essential agricultural need was demonstrated there would be no conflict with the development plan.
24. The Council in this appeal has relied solely on vague and generalised assertions which are unsupported by any objective analysis. Consequently, I find that the Council has not substantiated its reasons for issuing the notice nor demonstrated why planning permission should not be granted for Barn 2. As such, they have acted unreasonably in issuing the enforcement notice and the Appellant has occurred wasted time and costs in defending the appeal.

Conclusion

25. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the Planning Practice Guide has been demonstrated and that a full award of costs is justified.

Costs Order

26. 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 Stroud District Council shall pay to Mr D Orchard, 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.
27. The applicant is now invited to submit to Stroud District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Pleasant

INSPECTOR