



Costs Decision

Site visit made on 10 May 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2023

Costs application in relation to Appeal Ref: APP/A0665/C/22/3308903 Green Lane Farm, Green Lane, Kelsall, Chester, Cheshire CW6 0QA

- 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 Mr Richard Blything for a full award of costs against Cheshire West and Chester Council.
 - The appeal was against an enforcement notice alleging the demolition of an agricultural building and erection of one dwelling.
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Decision

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

Applicant's submissions

2. The application was not made on the form provided by the Planning Inspectorate. On that form there is a question as to whether the claim is for a partial or full award of costs. The Applicant's claim does not specify this, but I have taken it to be a claim for a full award of costs.
3. The Applicant submits that the Council has acted unreasonably by virtue of the allegation within the notice being made without foundation. In particular, the Applicant considers that despite the Council had been provided with key evidence, including the completion of a Planning Contravention Notice (PCN), it sought to serve the enforcement notice based on a single Google Street view image from 2011. This also followed the Council granting prior approval for the conversion of the subject building to a dwelling in 2019.
4. Finally, it is submitted that the version of the PCN provided by the Council sought to inaccurately represent the applicant's full comments and answers to the questions that formed the Council's evidence base.

Council's response

5. The Council contend that their decision to serve an enforcement notice was not based on a single Google Street view image, but also included evidence from Google Earth, and from third parties such as the Parish Council and Kingdom Ecology Ltd. In relation to the PCN, the Council submit that the only difference between the version received and that submitted was the omission of further comments made outside of the specific questions asked, as those comments would reveal personal details.

Reasons

6. Parties in planning appeals normally meet their own expenses. However, 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.
7. There is no dispute between the parties that the building had noticeably changed since the Google Street view image was taken in July 2011. The main area of dispute centred around when the alterations to the building took place and whether they amounted to the building being demolished and re-built as a dwelling.
 8. The Appellant provided the Council with a statutory declaration dated 26 January 2022 and a written response to the PCN dated 1 February 2022. It was readily apparent from both documents that in the view of the appellant the building had not been demolished and re-built as a dwelling, and that the only works that had been carried out to the building prior to the 2019 permission had been undertaken in October and November 2011. Copies of invoices for works at the site in 2011 were also made available to the Council well before the enforcement notice was issued on 13 September 2022.
 9. I disagree with the Applicant's suggestion that the Council sought solely to rely on a Google Street Image from 2011, although in my view much of the additional evidence provided by the Council, including the Google Earth image, did little to undermine the credibility of the appellant's evidence.
 10. However, the report by Kingdom Ecology Limited dated April 2017 that was prepared in relation a previous planning application on the site described the building as a *'large, steel framed cow shed constructed on a breezeblock base with timber cladding. The building has a pitched roof clad in corrugated metal panels'*. This would appear to indicate that any works or alterations to the building took place after April 2017, contradicting the Appellant's evidence that the works took place in late 2011. There was therefore evidence pulling in different directions.
 11. In its written appeal statement the Council provided evidence that significant changes had been made to the building since July 2011, which it considered amounted to a re-build as opposed to a conversion. The Kingdom Ecology Limited report along with representations from the Parish Council also appeared to indicate that these works had been carried out more recently than evidenced by the Appellant. Taking all matters into account, in my view the Council has shown in its case at appeal that it had reached a reasoned, albeit opposite to that of the Appellant, conclusion that was largely based on inferences drawn from the available evidence.
 12. Accordingly, whilst ultimately I did not share the Council's interpretation of the available evidence, it has nevertheless substantiated its case at appeal. In particular, I have found little to suggest that the Council acted in a manner that would amount to unreasonable behaviour or that the Council's actions involved the applicant incurring wasted expenditure.
 13. Finally, I do not find that the Council sought to inaccurately represent the Appellant's comments by omitting part of the response to the PCN which contained personal information. The Appellant was not prejudiced by the omission of these comments nor is there any evidence to indicate that the decision to issue the enforcement notice turned on it. Consequently, I do not find that this amounts to unreasonable behaviour nor did it result in the appellant incurring unnecessary or wasted expense.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

David Jones

INSPECTOR