The Planning Inspectorate

Costs Decision

Site visit made on 22 May 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2023

Costs application in relation to Appeal Ref: APP/N1730/X/21/3288009
Pond House, Church Lane, Dogmersfield, Hook RG27 8TA

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Gary Martin for a full award of costs against Hart District Council.
- The appeal was against the refusal of a certificate of lawful use or development for: Use of land as garden associated with Pond House.

Decision

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

Reasons

2. The Planning Practice Guidance 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.

3. The thrust of the appellant's case is that sufficient evidence was given to the Council to show on the balance of probabilities that the site has been in a residential use since at least 1969. A 'concept of lawfulness' was then highlighted with reference to s191(2)(a) of the Act. This clarifies that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

4. It was contended that the claim for lawfulness for both the northern and southern land fell within this. Whilst the residential use of the land to the south benefitted from the 2011 planning permission, the claim for the northern land centred on the use of a previous owner since 1969 which gives rise to a consideration of whether the time for enforcement action had expired.

5. For a person wishing to ascertain whether any existing use of buildings or other land is lawful, an application is made under s191(1)(a) of the Act. Given there was very little evidence before me that planning permission had been granted for a residential use of the northern land, it therefore relied upon a claim of immunity from enforcement action. This engages s171B(3) of the Act and thus a need to demonstrate a 10-year period of continuous usage (a relevant period), so that no enforcement action may then be taken.

6. The Council therefore first had to be satisfied there had indeed been a relevant period of residential use before considering whether severance of the land gave rise to other legal reasons that would preclude the issuing of a certificate.

7. The onus is on the appellant to demonstrate his case on the balance of probabilities. It was not for the Council to demonstrate an active agricultural use, or identify when this ceased, or necessarily seek or provide contradictory evidence to bolster a refusal. In my view, the Council provided clear reasoning for its position and in defending its refusal in respect of the northern land. This is because despite the appellant's assertion of residential use since 1969, the Council did not consider there to be sufficiently precise and unambiguous evidence of that use.

8. Whilst the Council's plan attached to the refusal of the certificate should not have included land to the south, given the 2011 planning permission, I do not accept that the appellant was then forced to appeal. The thrust of his case concerned the northern land and on-balance I do not find the inclusion of land to the south on the plan to have given rise to an appeal where unnecessary expense has flowed. This is because it was always going to be necessary to explain the history and relationship between the two parts of the site in detail.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR