The Planning Inspectorate

Costs Decision

Site visit made on 18 July 2023

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Costs application in relation to Appeal Ref: APP/W1145/C/22/3309901
Land at Peters Marland, AKA 'The Yard', Torrington, Devon, EX38 8QH

- 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 Torridge District Council for a full award of costs against Mr David Pearson.
- The appeal was against an Enforcement Notice alleging the construction and use of a dwellinghouse on the land.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Government's 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.

3. The PPG explains that awards against Appellants may be either procedural (in regard to behaviour in relation to completing the appeal process) or substantive (relating to the planning merits of the appeal). Looking at procedural matters first, the Council contends that the Appellant behaved unreasonably in providing information in response to the 2018 Planning Contravention Notice (PCN) which contradicts the evidence he has relied on at appeal; in refusing to respond to the Council's requests for a site visit; and in failing to respond to the 2022 PCN.

4. The information provided by the Appellant in response to the 2018 PCN is clearly at odds with the information he has subsequently provided in the course of the appeal. If information produced at the appeal stage shows that the enforcement notice (and subsequent appeal) could have been avoided, had that information been produced earlier, then an award of costs would be justified. But in this case, for the reasons set out in my appeal decision, I have found that the unsupported contentions made at the appeal stage do not overturn, or outweigh, the information provided in response to the 2018 PCN. While it may well be unreasonable to make assertions at the appeal stage which conflict with information earlier provided in response to a PCN, such behaviour did not, in this case, cause the Council to incur any additional expense. The appeal was brought on a number of grounds, and the conflicting evidence about when the Appellant began living at the Appeal Site is only one component of his case on ground (d).

5. The Appellant's lack of response to the Council's repeated requests for a site visit, and his failure to respond to the 2022 PCN, fall squarely within the examples listed by the PPG as unreasonable behaviour which may give rise to a procedural award of costs.[1] However, these events took place during the Council's investigations prior to taking enforcement action, rather than during the course of the appeal. The PPG says that such behaviour can be taken into account in a costs application[2], but there still needs to be a causal link: unreasonable behaviour by one party must have *directly* caused another party to incur unnecessary or wasted expense *in the appeal process* [emphases added].[3]

6. In this case, the unreasonable behaviour of the Appellant during the Council's preliminary investigations did not have any bearing on the appeal process. Put another way, the circumstances of the case are such that had the Appellant complied with the Council's requests to visit the site and/or completed the PCN issued in 2022, these actions would not have prevented the issue of the Enforcement Notice, or altered the terms or process of the subsequent appeal.

7. Turning to substantive matters, the Council rightly points out that one of the PPG's examples of behaviour that may give rise to an award of costs is where development is clearly not in accordance with the Development Plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise.[4]

8. The Appellant's case on ground (a) (that is, that planning permission should be granted for the matters alleged in the enforcement notice) included an argument that the Appeal Site qualified as previously developed land, such that it would not constitute undeveloped land in the countryside, and its development would be supported by national planning policy in the form of the NPPF. For the reasons set out in my appeal decision I do not share that view. However, reaching a conclusion on the issues involved the exercise of planning judgment, for example in establishing the correct planning unit. This was not, then, a case where there was simply conflict with the Development Plan and no other material considerations to weigh in the balance. The Appellant advanced other material considerations which, depending on the attribution of weight, may potentially have been capable of overcoming conflict with the Development Plan.

Conclusion

9. For the reasons set out above, I find that unreasonable behaviour such as may give rise to a substantive award of costs has not been demonstrated. I find that the Appellant did behave unreasonably in procedural terms, but since this unreasonable behaviour did not result in unnecessary or wasted expense being incurred by the Council during the course of the appeal process, an award of costs is not justified.

Jessica Graham

INSPECTOR

[1] PPG paragraph 52
[2] PPG paragraph 32
[3] PPG paragraph 30
[4] PPG paragraph 53