The Planning Inspectorate

Costs Decision

Hearing Held on 3 May and 8 August 2023

Site visit made on 3 May 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2023

Costs application in relation to Appeal Refs: APP/U3935/C/22/3295441, APP/U3935/W/22/3296042
Farm Buildings at Eastrop Farm, Shrivenham Road, Highworth, Swindon SN6 7QQ

- 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 Swindon Borough Council for a full award of costs against Mr Nigel King of Eastrop Barns Ltd.
- The hearing was in connection with appeals against an enforcement notice alleging the erection of two incomplete buildings and for the proposed change of use and rebuilding of agricultural buildings to provide 5 dwellings.

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 Council's case is that a Hearing was not necessary as there was nothing that required clarification and there was no distinction from a previous enforcement appeal that was carried out as written representations. The Hearing then had to be adjourned due to the illness of the appellant's agent, even though he is not a sole practitioner, and his colleague is fully familiar with the case. A reversion to written representations was also resisted.

4. A recent nearby appeal decision then set out that this was not an accessible location and was therefore not sustainable development. The appellant had not addressed this decision. There were also no heritage benefits. There were therefore no material matters that provided weight in favour of the proposal that could outweigh the locational harm.

5. The deemed planning application only related to incomplete buildings. The appellant's case then relied entirely on the use of the buildings for residential use, which is at odds with a previous Inspector's decision letter. There is then no policy support to retain incomplete buildings.

6. Finally, the ground (f) and (g) appeals were entirely unreasonable. All of the above has then resulted in wasted time and expense.

7. The appellant highlights that the parties do not determine the mode of procedure. The appellant's agent was then taken ill immediately before the Hearing, and so it was unrealistic that a colleague stand in for him.

8. The site of the nearby appeal decision is then not precisely in the same location and different criteria apply, such as in respect of the footpath and heritage benefits. These are then matters for an Inspector's planning judgement. That appeal decision was therefore not a silver bullet and was issued after the deadline for written statements.

9. Reasoned justifications were then made in respect of the deemed planning application, and it was logical to make a case for the allegation to be amended. The ground (f) appeal then raised that the footings etc were original and therefore not liable to enforcement action.

10. In terms of my findings, whilst the appellant pursued a Hearing, it was ultimately not his decision, as it was one made by the Inspectorate. Whilst the Hearing was comparatively short in its overall duration, it enabled me to clarify matters at a site with a reasonably complex planning history and where co-joined enforcement and planning appeals were before me. I then accepted during the Hearing that the appellant's agent was legitimately unable to attend and that he would be required to attend to avoid prejudice to the appellant. I accordingly then scheduled the date for the resumption of the Hearing.

11. The weight to be given to the various main issues and other considerations in this appeal was then a matter for my planning judgement. As it turned-out, there was sufficient weight to conclude that the adverse impacts did not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The appeal was accordingly differentiated from that nearby.

12. The appellant also attempted to persuade me that the alleged breach of planning control should be amended. I did not accept this. His case was then premised on me doing so, but very little time and only moderate written evidence was devoted to the absence of policy support for the incomplete buildings. I accordingly do not consider that the appellant's approach amounted to unreasonable behaviour.

13. It was also not unreasonable to pursue the ground (f) and (g) appeals given the parties agreed there was some original fabric or materials used in the construction of the incomplete buildings and the appellant's desire to otherwise work with the Council to agree an alternative solution to retain them.

Conclusion

14. 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