



Costs Decision

Site visit made on 27 June 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2023

Costs application in relation to Appeal Ref: APP/U4230/W/22/3313771 Woollen View Farm, Moss Road, Cadishead, Irlam M44 5JT

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr M Downey for a full award of costs against Salford City Council.
 - The appeal was against the refusal of planning permission for the demolition of the existing dwelling and existing barn and erection of 2no. dwellings with associated works.
-

Decision

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

The submissions for Mr M Downey

2. An application for a full award of costs was submitted in writing by the applicant against Salford City Council (SCC) on both procedural and substantive grounds.
3. In terms of procedural grounds, the applicant alleges that the Council has acted unreasonably by not dealing with the application in a timely manner, taking almost a year to determine the application.
4. In relation to substantive grounds, the applicant alleges that the Council has acted unreasonably in relation to the assessment of the site and determination of as to whether it falls within the definition of Previously Developed Land (PDL) contained within Annex 2 of the National Planning Policy Framework (the Framework).

The response by Salford City Council

5. The response to the costs application was made in writing by SCC. The Council firmly resists the application made against it and maintains that it has not acted unreasonably in either procedural or substantive terms.
 6. The Council acknowledges that the planning application was not determined within the 8-week statutory period for determination and advises that the delay occurred due to an ongoing dialogue with the applicant about the status of the site. The Council argues that during that period the applicant was invited to submit further information to resolve that dispute before the application was determined and in doing so more than one extension of time had been agreed with the applicant.
 7. The Council confirms that a Statutory Declaration and other information was subsequently submitted and informed its determination.
-

Reasons

8. 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. The PPG¹ provides that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural matters, such as demonstrating a lack of co-operation with the other party.
9. In terms of the procedural matters raised, it is clear that the invitation made to the applicant to submit further information was accepted and although the determination of the application was delayed beyond the 8-week determination period, there was an ongoing dialogue between the Council and the applicant. Furthermore, the evidence provided is insufficiently conclusive to lead me to concur with the applicant and the Council has confirmed that the applicant agreed to more than one extension of time during the course of the application in a bid to resolve this dispute. On that basis, I conclude that the Council has not acted unreasonably in this regard.
10. In terms of the substantive matters raised, the advice contained within the PPG² states that in the considering whether an existing use is lawful, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse, if the applicant's evidence alone is sufficiently precise and unambiguous.
11. In this particular case, the Council determined that there was ambiguity regarding the evidence, sufficient for them to conclude that they were not satisfied that it had been demonstrated that the use was lawful. I agree that the planning history and previous submissions to the Council does create a degree of uncertainty, sufficient for me to conclude that the Council has not acted unreasonably in this regard.
12. Furthermore, the applicant has not taken the opportunity to seek the formal determination of the lawful use of the building in question. Regardless of the outcome of the appeal, it was and is still open to the applicant to apply to the Council for that separate determination under Section 191 of the Act.

Conclusion

13. For the reasons given above, I do not find that unreasonable behaviour on either procedural or substantive grounds, as described in the PPG is evident. Consequently, neither has any unnecessary expense in terms of this appeal occurred.
14. As the relevant tests set out in the PPG in respect of the determination of costs applications have not been met, I conclude that an award of costs is not justified.

K Lancaster

INSPECTOR

¹ Paragraph: 047 Reference ID: 16-047-20140306 and Paragraph: 049 Reference ID: 16-049-20140306

² Paragraph: 006 Reference ID: 17c-006-20140306