



Costs Decision

Site visit made on 10 October 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08th December 2023

Costs application in relation to Appeal References:

APP/B3030/C/23/3315917, APP/B3030/W/22/3313346 and

APP/B3030/W/22/3313348

Land known as Building South West of Walnut Cottage, Newark Road, Kilvington, NOTTINGHAM NG13 9PD

- 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 Anthony Hilton-Bailey for a full award of costs against Newark & Sherwood District Council.
 - The appeals were against an enforcement notice alleging the erection of a building, a failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for alterations to an agricultural building, and, against the refusal of planning permission for alterations and conversion of a building for use as holiday accommodation.
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Decision

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

Reasons

2. 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.
3. The applicant claims that more diligent investigation would have negated the need for the Enforcement Notice. However, the Council's report makes it clear that the site was visited and discussions with the applicant took place at that time. Section 172 of the TCPA 1990 provides that a local planning authority may issue a notice where it appears to them (a) that there has been a breach of planning control, and (b) that it is expedient to issue a notice, having regard to the provisions of the development plan and to any other material considerations.
4. The only test in s172 is that it 'appears' a breach of planning control has occurred. It is not subsequently incumbent on the Council to serve a Planning Contravention Notice.
5. There was no dispute between the main parties that a development similar to that granted planning permission in 2009 for a chicken shed had occurred. However, despite that the original part of the works could be construed as constituting a commencement of the permission in its early stages, what subsequently took place, and the deviations from the terms of the planning permission, were sufficient to find that the permission had not been

implemented in accordance with its terms and conditions. The development on site is something else. This position is supported by the use the building has been put to. It reflects my own finding that the existing building is development requiring planning permission. Irrespective of any consideration as to the 'intention' of the applicant, I find the council's assessment of the potential breach to be valid and the service of the Notice was not unreasonable in the circumstances.

6. The applicant refers to an officer report making a recommendation that enforcement action be pursued. This suggested a different timescale for compliance with the requirements of the Notice. However, as a mere recommendation report, there is little to demonstrate that any change to the suggested period for compliance was inherently unreasonable. As a judgement necessary to balance the public interest in securing expeditious compliance with the Notice against the private interest bound up in the development, it seems a reasonable balance was reached.
7. It is claimed that the Council failed to consider policies in the National Planning Policy Framework (the Framework) and give due weight to them and other relevant material considerations. Each of the reports /statements provided by the Council make explicit reference to the Framework in their assessment of the proposed uses of the building and the expediency to take enforcement action. Relevant policies in the development plan are also referenced. The weight to be given to the relevant policies and considerations is a matter for the decision-maker.
8. As identified in my Decision Letter, the Council's application of the requirement in policy DM8 of the Newark & Sherwood Allocations and Development Management Policies DPD - to explain the need for an agricultural development, is entitled to some weight. Contrary to the applicant's assertion, it was adopted after the first iteration of the Framework and was subsequently referenced in Spatial Policy 3 of the Amended Core Strategy, adopted in 2019. Paragraph 219 of the Framework is clear that due weight should be given to policies according to their degree of consistency with the Framework.
9. Despite a number of iterations of the Framework, there is nothing in it to preclude a local requirement for supporting information to justify a development. This is not an unusual or unreasonable approach to development management.
10. The claim lists numerous references to caselaw. However, it fails to explain how each was mis-applied or which were failed to be considered. It has not therefore been demonstrated that unreasonable behaviour has taken place in that regard.
11. The applicant indicates that the Council has acted inconsistently in its decision-making and given insufficient weight to the approval of recreational and tourism development at Kilvington Lakes to the north of the site. Although other decisions are relevant, planning decisions must be considered on their own merits. The evidence provided by the applicant in relation to the Kilvington Lake site was limited. It has not therefore been possible to draw similarities, or otherwise, between the different proposals for holiday accommodation. Accordingly, I cannot conclude that the refusal of planning permission subject of Appeal B amounted to unreasonable behaviour despite the close proximity of the sites.

12. I note the applicant's concern that the Council has prevented or delayed development which should clearly be permitted. This is unsurprising given the parties opposing starting points as to the planning status of the existing building. However, given my own finding that the existing building does not have the benefit of planning permission, then the appellant's arguments forwarded in the alternative either fell away or attracted more limited weight, as the case may be. The Council's approach from a different starting point to that of the applicant was not therefore inherently unreasonable.
13. The applicant has highlighted a number of other substantive matters he considers to be unreasonable behaviour. However, no detailed explanation of this is provided. I am therefore unable to conclude with any certainty that unreasonable behaviour leading to wasted expense has occurred.
14. Accordingly, whilst I have subsequently found in favour of the development proposed under Appeal B (APP/B3030/W/22/3313346), I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

R Hitchcock

INSPECTOR