



Costs Decision

Site visit made on 29 September 2023

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Costs application in relation to Appeal Ref: APP/H0724/W/23/3323428 Low Throston House, The Bungalow, Netherby Gate, Hartlepool TS26 0LF

- 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 Haygarth for a full award of costs against Hartlepool Borough Council.
 - The appeal was against the refusal of change of use of land to extend curtilage of 1no. dwelling approved under H/2021/0215 and to enclose land into residential curtilage.
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Decision

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

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 is of the view that the local planning authority (LPA) has acted unreasonable in refusing the development without appropriate cogent grounds to do so and has made false and misleading statements, with particular reference to the boundaries of the Scheduled Ancient Monument (SAM). The applicant also asserts that the LPA forced them to file the appeal in a restricted time limit by threats of enforcement action.
4. The PPG¹ sets out that LPA's have responsibility for taking whatever enforcement action may be necessary, in the public interest. They have discretion to take enforcement action², when they regard it as expedient to do so having regard to the development plan and any other material considerations. Local authorities should act in a proportionate way.
5. The LPA's decision notice was issued on 15 March 2023, which was accompanied by the notes for the applicant. This included that if they were aggrieved by the decision, they may appeal to the Secretary of State within 6 months of the date of the notice. The appeal was received on 1 June 2023.
6. From the evidence presented from the LPA Appendix A / B, the applicant was in engagement with the LPA over their decision to refuse planning permission. An indication that an appeal would be forthcoming by the applicant was confirmed in writing by an email on 5 May 2023, it appears that there was a delay in the submission of the appeal, but this was due to the applicants own personal circumstances. The LPA did advise the applicant that an appeal should be

¹ Paragraph: 002 Reference ID: 17b-002-20140306

² Paragraph: 003 Reference ID: 17b-003-20140306

submitted by 22 May 2023, as if not then they would have no other option that to progress any enforcement action under the powers available³. Nevertheless, it appears from the evidence the LPA had carried out prior investigations at the site and were flexible to this date. The LPA were proportionate in the response in allowing the appellant additional time to appeal the decision before pursuing to any enforcement action, even though the development had an ⁴unacceptable impact on the amenity of the area.

7. Thus, there is nothing before me to suggest that the LPA acted in an unreasonable manner, the LPA actively engaged with the applicant to allow them to make a timely valid appeal for a retrospective development, and one which was a breach of planning control. Moreover, I do not consider that the applicant has been forced to make an appeal as this was a matter of choice for the applicant, even if an enforcement notice had been served.
8. Turning to the issue of the boundaries of the SAM, the formal appeal decision sets out the considerations of the case including personal circumstances and matters relating to the boundary of the SAM. There is no reason for me to repeat this in the cost application. The applicant as part of the appeal process is entitled to provide evidence to support their appeal, and in this case provided their own interpretation of the boundaries in a timely manner with the appeal submission.
9. Nevertheless, it is clear from the evidence that during the application the LPA had consulted with Historic England (HE), it appears from HE they also had prior knowledge of the site from consultations on the original planning permissions. Thus, there is no evidence to suggest the LPA failed to consult. HE has also provided representation during the appeal process, of which the applicant has had sight. HE clarified their position based on the applicant's own evidence and how HE came to their conclusion that the SAM is depicted on the NHLE⁵ and that the applicant's evidence is simply not precise.
10. In this case, it appears that there is a disagreement on the boundaries of the SAM between the main parties. However, there is no substantive evidence that the LPA acted unreasonable in coming to its conclusions on this matter or providing information that was shown to be manifestly inaccurate or untrue. Furthermore, the LPA clearly set out the reasons why the development was unacceptable and contrary to the development plan and the National Planning Policy Framework. Moreover, I consider that it is a case which could have only been resolved by way of an appeal.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense, as defined by the PPG, has not occurred and an award of costs is not warranted.

K A Taylor

INSPECTOR

³ The Town and Country Planning Act 1990 (as amended)

⁴ Paragraph: 005 Reference ID: 17b-005-20140306

⁵ National Heritage List for England