The Planning Inspectorate

Costs Decision

Site Visit made on 19 December 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2024

Costs application in relation to Appeal Ref: APP/P2935/W/23/3331094 Shaw House Farm, C251 Shaws House to Newton Hall, Newton, Stocksfield NE43 7UE

- 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 Ben Kibler for a full award of costs against Northumberland County Council.
- The appeal is against a failure to give notice within the prescribed period of a decision on an application for planning permission for the change of use of land within former farmstead to provide resident and visitor car parking facilities in association with previously approved conversion of agricultural buildings to form 7no. dwellings (planning permission refs: 18/03543/FUL and 22/01590/VARYCO).

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the 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. For an application to be successful, it needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Parties in the appeal process are normally expected to meet their own expenses.

3. The applicant submits that the Council has acted unreasonably during the appeal which has caused unnecessary expenses to be incurred by needing to address issues that had not previously been raised.

4. The planning application submitted to the Council had a statutory determination date of 16 June 2023. No decision was issued by the Council by this date or up to the point when the applicant lodged their appeal on 11 October 2023. The Council had indicated to the applicant by email on 19 September 2023, seemingly following an exchange of correspondence, that the planning application would likely be refused based on its effect on the Green Belt and the character or Shaw Farm Cottages. Given the Council's stance, the applicant decided to expedite their appeal rather than wait for a decision notice to be issued by the Council.

5. The email from the Council officer was not a formal determination of the planning application, however it shows that the proposal and its potential effects were understood in terms of the Green Belt but also in relation to 4 Shaw House Cottage. The email also outlines concerns insofar as the character and appearance of the area, but not with respect of Shaws Farmhouse, a listed building.

6. I am mindful that the officer's opinion is not binding on the Council, but it seems to me that a reasonable assessment had been carried out. I am unclear whether a site visit had taken place by this time, but the email indicates that there is already an understanding of the site's context based on points made about the scheme's effect on the character of the existing buildings when viewed from the street scene and other vantage points.

7. Although the Council point to the Environment and Design Team's advice being available online for the appellant to view, that advice was available to the Council also a few months prior to the email on 19 September, yet their concerns are not included. Whether that is an oversight or not, it was reasonable for the applicant to deduce that the concerns raised with the character and appearance of the area did not include the setting of Shaws Farmhouse given the Council or its officers are not obliged to follow consultee's advice. There was also no mention by the Council of concerns with the parking layout's effect on the living conditions of No 4 or the spatial strategy, which were plausible concerns given the site's location and the new parking layout next to No 4.

8. All parties are expected to behave reasonably throughout the planning process. While costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account. Added to this, people involved in the planning process are encouraged to engage and local planning authorities to properly exercise their development management functions. Against this backdrop, given that the Council had outlined its concerns on specific issues relating to the proposal before the appeal was lodged, it has, in not outlining others, unreasonably introduced new reasons for refusal that has caused the applicant to incur additional expense in the appeal process relating to the spatial strategy and living condition issues.

9. The applicant's contention about the Council's approach to the setting of the listed building relates to whether the former farm buildings are curtilage listed. Whilst they may be physically separate from Shaws Farmhouse, and now in different ownership, they were previously in the same ownership, and there is no indication that they were not when the building was listed. The Council reached a judgement on that basis. Although the wording of consultation response for the planning application subject of this appeal could have been more specific to the current ownership situation, the Council's stance on the former farm buildings being curtilage listed has been consistent throughout the site's recent planning history. I recognise the applicant may disagree with that assessment and they were not involved in the earlier planning applications, but that does not necessarily mean the Council has acted unreasonably either.

10. In any event, the effect of the parking layout on the setting of the listed building was a live issue for the appeal given its location and proximity to Shaws Farmhouse off the dual carriageway. That applies irrespective of whether the listing is confined to Shaws Farmhouse or it also includes the former farm buildings. The Council, like I, have a statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended). Therefore, in pursuing their appeal, the applicant should have expected to provide evidence about the matter as part of their case despite the Council's position. Hence, the applicant has not incurred unnecessary or wasted expense even if the Council acted unreasonably in this regard in not raising the issue before the appeal was lodged.

11. In conclusion, I am of the view that the application for a full award of costs should fail as the applicant has not incurred unnecessary or wasted expense in respect of the listed building issue. However, due to the Council's behaviour and the introduction of the spatial strategy and living conditions issues at appeal, which were not previously raised by the Council, the applicant has incurred additional expense in the appeal process. A partial award of costs is therefore justified for these matters.

Conclusion

12. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated. As a result, a partial award of costs is warranted in this case.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Northumberland County Council shall pay to Mr Ben Kibler, the partial costs of the appeal proceedings limited to those incurred in relation to matters concerning the spatial strategy and living conditions of No 4; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to the Northumberland County Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew McGlone

INSPECTOR