



Costs Decision

Site visit made on 5 February 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18th March 2024

Costs application in relation to Appeal Ref: APP/M0655/C/23/3319286 Pear Tree Farm Barn, Well Lane, Lower Stretton, Warrington WA4 4PA

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - An application is made by Warrington Borough Council for a full award of costs against Jack W Thwaites
 - The appeal was against an enforcement notice alleging a material change of use to garden land.
-

Decision

1. The application for a partial award of costs against the appellant is allowed in the terms set out below.

Planning Practice Guidance (PPG)

2. Parties in planning appeals normally meet their own expenses. However, the 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.

Council's claim

3. The Council is seeking a substantive costs award on the basis that an appeal decision dealing with the garden land was dismissed on the 15 December 2022 and there have been no changes of circumstances since that date. The Council refers to Paragraph: 053 Reference ID:16-053-20140306 of the PPG which states that an appellant is at risk of an award of costs if the appeal has no reasonable prospect of succeeding. Examples given include an appeal following a recent appeal decision in respect of the same or a very similar development on the same site where an inspector decided that the proposal was unacceptable and circumstances have not materially change in the intervening period.
4. The Council maintains that circumstances have not materially changed since the dismissal of the previous appeal decision. The Council is therefore of the view that the appeal is unreasonable and has resulted in unnecessary expense.

Appellant's response

5. The appellant states that he has submitted new documents for this appeal and the previous appeal did not properly address the health and safety issues as a special circumstance. He has a right of appeal. He has submitted two planning applications to re-site the garden to try and deal with the matter and had the Council been more reasonable, "we would not be appealing at this level."

Reasons

6. The previous appeal was a retrospective application for planning permission for the garden area which is also the subject of the material change of use alleged in this enforcement appeal. The appellant's argument is that significant rather than limited weight should have been attributed to the safety reasons for having a garden on a farm when assessing very special circumstances in the Green Belt.
7. Whilst the appellant does have a right of appeal, that right has to be exercised reasonably particularly where there has been a recent appeal decision about the development. Whilst there are other ongoing planning applications relating to the appeal site, the issue before me is whether it was unreasonable for the appellant to pursue this appeal. The new document consists of a 2 page report which largely repeats the Health and Safety Executive (HSE) advice that was submitted for the previous appeal. I have attached limited weight to the issue of farm safety based on the information provided and the appeal has been dismissed.
8. I do find that it was unreasonable for the appellant to pursue ground (a) largely to challenge the amount of weight attributed to a specific matter addressed in the previous decision appeal based upon very limited new information. The Council has incurred unnecessary costs in having to deal with ground (a).
9. The appellant has also pursued other grounds of appeal namely ground (c) and (f) both of which involved consideration of case law. The extent to which an enforcement notice can secure removal of other works where the allegation is a material change of use was not part of the previous planning appeal. The unrepresented appellant has not understood how the relevant case law applies to the facts of the appeal. In the circumstances, I do not consider that pursuing grounds (c) and (f) constitutes unreasonable behaviour on the part of the appellant.

Conclusion

10. Unreasonable behaviour resulting in unnecessary and wasted expense as described in the PPG has been demonstrated in respect of ground (a) and a partial award of costs is therefore justified.

Costs Order

11. 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 Jack T Thwaites shall pay to the Warrington Borough Council the costs of the appeal proceedings described in the heading of this decision limited to those relating to the ground (a) appeal, such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The Council is now invited to submit to Jack T Thwaites, details of those costs with a view to reaching agreement as to the amount.

E Griffin

INSPECTOR