



Costs Decisions

Site visit made on 21 February 2024

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2024

Costs application 1 in relation to Appeal Ref: APP/V2635/W/23/3322063 72 South Beach Road, Heacham, King's Lynn, Norfolk PE31 7BB

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Nigel Marsh for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The appeal was against the refusal of planning permission for proposed change of use of existing agricultural buildings to holiday home use without complying with a condition attached to planning permission Ref 12/00197/F, dated 24 May 2012.
-

Costs application 2 in relation to Appeal Ref: APP/V2635/W/23/3322063 72 South Beach Road, Heacham, King's Lynn, Norfolk PE31 7BB

- 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 King's Lynn and West Norfolk Borough Council for a full award of costs against Mr Nigel Marsh.
 - The appeal was against the refusal of planning permission for proposed change of use of existing agricultural buildings to holiday home use without complying with a condition attached to planning permission Ref 12/00197/F, dated 24 May 2012.
-

Decisions

1. Application 1 for a full award of costs is allowed in the terms set out below.
2. Application 2 is refused.

Procedural Matters

3. For clarity, I refer throughout the decision to Mr Nigel Marsh as 'the appellant' and to King's Lynn and West Norfolk Borough Council as 'the Council,' regardless of which party is the applicant and respondent in each costs claim.
4. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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.
5. Examples of where local planning authorities risk an award of costs include if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications or unreasonably defending appeals.
6. Examples of where appellants are at risk of an award of costs are if they provide information that is shown to be manifestly inaccurate or untrue, or deliberately conceal relevant evidence at planning application stage or at a subsequent appeal.

7. The PPG further makes it clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal stage, but that behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.

Reasons

Costs Application 1 by Mr Nigel Marsh against the Council

8. The appellant's claim is that the Council failed to determine the proposal as applied for, or as a minor material amendment under Section 73 of the Act, but instead went beyond its remit and based its determination on unsubstantiated claims that the rooms were being used as separate, additional holiday accommodation. In doing so, the Council failed to take into account that the works did not amount to development or that there was already a condition which prevented sleeping accommodation on the ground floor. The appellant also states it was unreasonable for the Council to request a business plan and Green Infrastructure & Recreational Avoidance Mitigation when no additional accommodation was proposed.
9. The Council responds that it is beyond doubt that the games rooms and storeroom are being used as additional holiday accommodation and that the determination was made within the scope of Section 73. It adds that the works amount to development requiring planning permission as they involved external alterations for which permitted development rights have been removed, and the change to the games room effected a material change of use for which planning permission was required. The Council adds that a Section 73A application enables it to consider the application as if it were a full planning application, and the additional information was sought to enable the Council to consider the development that had been undertaken, i.e. additional holiday let accommodation.
10. As set out in my main decision, I am content that the proposal was capable of being determined under Section 73. Whilst Section 73A allows for permission to be granted retrospectively, the onus is on the Council to assess the application as made. However, the Council instead treated it as being for a different development not specified in the submitted documents or plans.
11. Whilst the Council's investigations had generated concerns with the appellant's intentions for the development, the forum to address these was through the planning enforcement regime. It was not for the Council to determine the proposal on the basis of what it believed was happening on site, or what it believed the application should have been made for in order to regularise the development on site. In essence, the Council conflated its enforcement investigation and the application, in doing so assessing a different form of development against different planning policies, which prompted its request for additional evidence that on a straight assessment of the proposal would not have been necessary.
12. I find that the Council's actions in this respect amount to unreasonable behaviour which has directly led to the appellant having to make the appeal. Moreover, the Council has persisted with its position at appeal and failed to offer any substantive response to points made by the appellant, including the existence of Condition No 5 of the original permission as a means to enforce

against the use of the games rooms as additional, individual units of accommodation.

13. Therefore, I find that the Council has relied on vague, generalised and inaccurate assertions about the proposal's impact, unsupported by objective analysis. This amounts to unreasonable behaviour, as a result of which the appellant has been put to the wasted expense of making the appeal. A full award of costs is therefore justified.

Costs Application 2 by the Council against Mr Nigel Marsh

14. The Council's claim is that the appellant has provided manifestly untrue or inaccurate information as part of the application, as its position is that there is unquestionable evidence that the games rooms are in fact additional units of holiday accommodation which are available to book, a fact that the appellant has deliberately concealed, including by preventing the planning officer from seeing the rooms on site.
15. The appellant responds that the use of the games room is not in breach of Condition No 5, which precludes use of the ground floor for sleeping accommodation, and that the Council's unevidenced claim is not rational or reasonable. There is no intention to use the games rooms as independent holiday accommodation. They are either an addition to holiday accommodation or used during the day by guests of the site.
16. As set out in my main decision, whilst the Council had concerns over the accuracy of the appellant's information, its own evidence to counter these statements was limited to website screenshots from a single point in time that were not conclusive in demonstrating an ongoing holiday accommodation use. As such, I cannot be certain that the appellant has made manifestly untrue or inaccurate statements or deliberately concealed evidence. The Council's concerns with the appellant's conduct during interactions on site are noted, but the evidence before me does not indicate any procedural missteps by the appellant during the appeal.
17. Therefore, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that an award of costs is not justified.

Costs Order (in relation to Application 1 only)

18. 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 King's Lynn and West Norfolk Borough Council shall pay to Mr Nigel Marsh, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The appellant is now invited to submit to King's Lynn and West Norfolk Borough 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.

K Savage

INSPECTOR