



Costs Decision

Site visit made on 5 March 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2024

Costs application in relation to Appeal Ref: APP/P2365/X/23/3331276 Hundred End Farm, Marsh Road, Banks, Lancashire PR9 8DZ

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Paul Barton for a full award of costs against West Lancashire Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development for 'the prior creation of access to Hundred End Farm, Marsh Road, Banks from Hundred End Lane. This involved the construction of two brick piers and a metal gate set back from Hundred End Lane...'.

Decision

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

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 PPG says that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing applications. The main thrust of the applicant's case is that the Council considered the wrong immunity period, assuming it was necessary to show ten years continuous use rather than four.
4. As set out in my appeal decision, the application concerns development consisting of the carrying out without planning permission of building operations and so should have been considered under section 171B(1) of the Town and Country Planning Act 1990 (as amended)(the Act), which provides no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
5. The Council's reason for refusing the application was it was not satisfied the opening has been continuously utilised for vehicular access for a period of 10 years or more prior to the date of submission of the application. The Council appears to have misunderstood why the creation of an access would constitute development, focusing on the use of the access rather than the works which have been carried out. This is unreasonable.
6. While I have found there has been no formation and laying out of a means of access to the highway, I have allowed the appeal in respect of the piers and the gate. Furthermore, had the Council considered the application on the correct basis, the applicant may have decided not to appeal its decision in respect of the access.

7. For the reasons given above, I find unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

8. 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 West Lancashire Borough Council shall pay to Mr Paul Barton, 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.
9. The applicant is now invited to submit to West Lancashire 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.

M Savage

INSPECTOR