The Planning Inspectorate

Costs Decision

Hearing Held on 8 May 2024

Site visit made on 8 May 2024

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 24 May 2024

Costs application in relation to Appeal Ref: APP/R1038/C/23/3331303
Land at Hagg Hill Hall, New Tupton, Chesterfield S42 6JU

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Melvyn Humphreys for a full award of costs against North East Derbyshire District Council.
- The hearing was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the Land from agriculture to residential use.

Decision

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

The submissions for Mr Melvyn Humphreys

2. The Appellant submits that a full award of costs is justified. Having regard to his medical condition, the Appellant considers that it was unreasonable for the Council to issue an enforcement notice, particularly as they were aware that he was in the process of making a retrospective planning application for the development. Furthermore, the Council did not carry out adequate prior investigation into the planning circumstances of the development. Very late evidence was provided regarding the 'Connor principle' and heritage legislation was included in a legal submission relating to the Cauldwell case.

3. The Appellant also contends that the reasons given as to why planning permission should not be granted for the development, in relation to impact on the landscape and the setting of the listed building are vague, generalised, inaccurate and unsupported by any objective analysis.

4. It is contended that the actions of the Council in respect of these matters was unreasonable behaviour and resulted in wasted expense. The costs are associated with the preparation of paperwork associated with the submission of the appeal, preparation of the grounds of appeal, obtaining sworn statements and gaining legal advice relevant to the case.

The response by North East Derbyshire District Council

5. In response the Council submits that although it is always open to an applicant to make a retrospective planning application to retain unauthorised works, the outcome of any decision on that application would not necessarily be favourable. The Council set out clearly in their enforcement report why they

considered it expedient to take enforcement action and considered the Human Rights implications of that decision.

6. The Council were fully aware of the planning circumstances surrounding the development, and the burden of proof on legal grounds of appeal rests with the Appellant. The Council produced evidence to support their case in respect of the impact of the development on the setting and significance of the listed building and on landscape impact. The legal note was provided in response to new case law and set out legal principles which are not in dispute. The legal note was not late evidence.

7. The Council do not consider their behaviour to be unreasonable and that their actions did not result in any wasted cost to the Appellant as part of the appeal process.

Reasons

8. 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.

9. In relation to procedural matters, PPG advises that local planning authorities are required to behave reasonably in relation to procedural matters at appeal. For enforcement action, this includes where an appeal could have been avoided by more diligent investigation, and thus avoided the need to serve the notice in the first place or ensured that it was accurate.[1]

10. PPG advises that a local planning authority is at risk of an award of costs if they behave unreasonably in respect to the substance of the matter under appeal. Examples include vague, generalised, or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.[2]

11. Whilst it is open to an Appellant to make a retrospective application for any unauthorised works, the Council is also at liberty to instigate enforcement action in relation to those unauthorised works, should they consider it expedient to do so. The Council set out clearly in their enforcement report why they believed it expedient to take enforcement action and considered the Human Rights implications of doing so. That report followed a formal requisite for information and site inspection. The local planning authority did not therefore act unreasonably. The decision on whether a material change of use has taken place is a matter of planning judgement, and the appeal could not have been avoided.

12. In relation to substantive matters, the local planning authority set out clearly in the enforcement notice their reasons for issuing the notice. The reasons were precise and specific. In addition, the reasons clearly state which policies of the development plan the development would conflict with. Furthermore, the Council did further support their reasons and set out concerns over the proposed impact on the heritage asset and landscape character in a statement of case, whilst also providing expert evidence at the hearing. The legal note was provided to deal with a very recent court judgement, which had been made after statement deadlines. Whilst references to other case law were

[1] PPG, Paragraph: 048 Reference ID:16-048-20140306
[2] PPG, Paragraph: 048 Reference ID:16-049-20140306

referred to in the legal note, the Appellant had an opportunity to respond to those matters at the hearing, and also produced a legal note.

13. Although I did not need to make a decision on ground (a), I am satisfied that the Council adequately substantiated its reasons for issuing the notice and the appeal could not have been avoided.

14. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has not been demonstrated.

Elizabeth Pleasant

INSPECTOR