Planning Inspectorate

Costs Decision

Inquiry held 10-12 June 2025

Site visit made on 10 June 2025

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2025

Costs application in relation to Appeal Ref: APP/R1038/C/25/3359698
The Long Barn, Barlow Lees Lane, Dronfield S18 7UR

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by North East Derbyshire District Council for a full award of costs against Mr Chris Denton
- The inquiry was in connection with an appeal against an enforcement notice alleging the demolition of an agricultural barn and the construction of a new building used as a dwellinghouse.

Decision

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

Reasons

The basis of the claim for costs

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 advises that unreasonable behaviour by an appellant may include:

   - resistance to, or lack of co-operation with the other party or parties in providing information, discussing the application or appeal, or in responding to a planning contravention notice;
   - delay in providing information or other failure to adhere to deadlines; and
   - only supplying relevant information at appeal when it was requested, but not provided, at application stage[1].

4. This costs application relates to the ground (d) appeal. In particular, the Council argues that the change in the appellant's position regarding when the development was substantially complete was unreasonable and resulted in the ground (d) appeal and the need for an inquiry. It is also said that the appellant's case relied excessively on oral evidence rather than the written evidence exchanged before the inquiry.

[1] There was, of course, no application stage with this enforcement appeal.

The appellant's changed stance on substantial completion

5. In an email dated 18 July 2020, the appellant's legal representatives stated:

   As you are aware, our client did not undertake the works at the dwelling but purchased it relying on the planning permission and as such we are unable to confirm definitively when the dwelling completed. However, it is our view that these documents provide the best evidence available of the date of substantial completion of the interior and exterior of the property as of 29th January 2021. As previously stated, if the 4-year argument was to be offered, then this would take us to January 2025 and therefore allows the Council a longer period of time to consider enforcement proceedings. We do not have any evidence that completion took place any sooner than this available to us at present.

6. The Council says that it acted on that information in good faith and, as a result, did not rush to issue the enforcement notice as it otherwise might have done, but chose to engage with the appellant instead. Given that even now the appellant's claim is that the building was only substantially complete on 6 December 2020, the serving of the notice just a week earlier would have avoided ground (d) being pursued. Thus, it is said that the appellant engaged in a process of stringing the Council along in order to delay the issuing of the notice. That, it is said, is unreasonable behaviour, which led to the ground (d) appeal and the attendant expense.

7. However, there are difficulties with that argument. First, the comments of the appellant's representative regarding the immunity date were delivered in equivocal terms. It pointed out that the appellant did not undertake the works at the dwelling and advised 'we are unable to confirm definitively when the dwelling completed'. While it put forward the date of 29 January, it added 'We do not have any evidence that completion took place any sooner than this available to us at present'. That opened up the prospect that the stance might change in the light of new evidence. It should have come as no surprise to the Council that the appellant would try to acquire additional evidence over time.

8. Furthermore, even at that time the Council had some evidence available to it that could have given pause for thought, including a Gas Safe certificate dated 4 December 2020 and, had it checked, the registration of the property for Council Tax on 6 December 2020.

9. Finally, regardless of what the appellant's advisors had to say about the matter, the Council was taking a risk in serving the notice so late in the day. It was plainly aware of relevant law, having made reference to it in the email exchange. It would have known too that the decision on when substantial completion took place would ultimately depend on the assessment of all the evidence relating to the completion of the development and would involve an element of judgement. Since, on any view, the project was well advanced by late 2020, any small piece of evidence about some aspect of the final stages of the build could have tipped the balance as to the actual date of substantial completion. Thus, it was not wise to assume that a date suggested by the appellant's advisors – plainly with the potential to change – was correct.

10. In any event, even if the appellant's comments wrongfooted the Council, the evidence before me does not show that there was a deliberate attempt to mislead.

11. The Council also raises concerns regarding the response to the Planning Contravention Notice (PCN) it served on Mr Denton on 24 May 2024. At question 9 the PCN asked whether any parts of the Long Barn had been demolished and at question 10 it asked whether any parts of the Long Barn had been rebuilt. The response stated 'We purchased the property from Mr Paul McGovan of P McGovan Builders in November 2021 and only he can answer questions 6 - 17 as he was the developer'. Yet at the inquiry Mr McGovan said that he had told Mr Denton, prior to the sale, that the original barn had been demolished. The PCN response makes no reference to that.

12. However, even if Mr Denton was told about the demolition of the original building, the significance of that might not have been obvious at the time, given that he is not a planning professional and the building he was buying came, apparently, with a planning permission. I do not know if he even recalled Mr McGovan's comment by the time the response to the PCN was made. It is understandable that he would be cautious about giving any detailed response to a PCN question concerning a subject he was uncertain about. In any event, by the summer of 2024 the Council had photographs showing that the original building had been demolished, so any doubts about that cannot have been responsible for any delay in issuing the notice.

13. For these reasons I am not persuaded that any delay in issuing the notice was caused by the appellant unreasonably stringing the Council along as claimed.

Quality of the written evidence

14. Prior to the inquiry, the ground (d) evidence produced for the appellant included the Statutory Declaration and Witness Statement of Mr McGovan. It is argued that this was lacking in a sufficient level of detail and precision, and that excessive reliance was placed on detail provided at the inquiry. The Council says in particular that his written evidence lacked information about the people who were working on the building, details about certain parts of the building and details about particular works such as plastering and the provision of services.

15. It is true that Mr McGovan elaborated on his evidence during the inquiry, but that in part was by answering the questions put to him by the Council. The inquiry procedure is designed to help get to a proper understanding of relevant matters, and so it is to be expected that some additional information will come forward. In this case I do not consider that there was any excessive addition to or departure from Mr McGovan's evidence, as set out in his Witness Statement and Statutory Declaration. Thus, the Council had an adequate basis on which to prepare for the inquiry.

16. Moreover, the appellant's case must be seen in the round. Mr McGovan was not the appellant's only ground (d) witness. Statements from Mr Woodhall and Mr Robinson were provided before the inquiry and gave details about the installation of services at the property. While some of the evidence given orally was useful and relevant, even without it the appellant had a respectable ground (d) case. Consequently, the pursual of ground (d) was not unreasonable. It is common for inquiries to be held where there is an appeal on ground (d), and there is nothing particular about the appellant's case here that prompted the choice of that method.

17. Overall, I am not persuaded that the appellant acted unreasonably in terms of the provision of written evidence, or withholding evidence, before the inquiry.

Conclusion

18. For these reasons I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Peter Willows

INSPECTOR