Planning Inspectorate

Costs Decision

Inquiry held on 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 Mr Chris Denton for a full award of costs against North East Derbyshire District Council.
- 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. The PPG sets out examples of behaviour of a local planning authority that can lead to an award of costs, including:

    - if an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate
    - preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations
    - failure to produce evidence to substantiate reasons on appeal
    - not reviewing their case promptly following the lodging of an appeal.

3. This appeal was made on grounds (a), (d), (f) and (g). The award of costs is sought on the basis that the Council's defence of the ground (d) appeal was unreasonable. This meant that ground (a) was also indefensible to the extent of being unreasonable. Had the Council accepted that ground (d) could not be resisted, the inquiry would have been unnecessary, even if the appeal had proceeded on the other grounds. In particular, it is argued, the Council should have withdrawn the notice once it had seen Paul McGovan's Statutory Declaration, bearing in mind that

it could subsequently have issued a further notice under s171B(4) of the Act. Alternatively, ground (d) could have been conceded on receipt of the detailed evidence for the appeal or once the appellant's witnesses had been heard during the inquiry.

Assessment

4. I have allowed the appeal on grounds (d) and (a). In so doing, I broadly accepted the ground (d) case made out by the appellant. However, that does not mean that the Council's ground (d) case was necessarily deficient to the extent that it was unreasonable.

5. The Council investigated the matter in some depth before issuing the notice, including issuing a Planning Contravention Notice (PCN). It also engaged with the appellant and his advisors before the notice was issued, discussing openly the question of when the development was completed and the evidence available to the appellant. At appeal, it set out a clear case, with an experienced enforcement officer – Mr Hawley - as a witness. Looking at his evidence as a whole, I am satisfied that he approached the matter carefully and methodically, applying the appropriate evidential test of the balance of probability.

6. Furthermore, the Council identified gaps in the appellant's evidence, such as a lack of invoices/receipts for many of the building materials and parts of the house which were not photographed at relevant points in time. While those gaps were understandable and did not change my view on the matter, it was legitimate for the Council to draw attention to them, given that the evidential burden fell on the appellant. In reaching my decision I had the benefit of some of the clarification and additions to the written evidence provided at the inquiry. Some of that, such as details about some of the plumbing and electrical work, assisted with my decision.

7. Moreover, cross examination during the inquiry exposed some flaws in the written evidence for the appellant. For example, some dates which appeared to be definite in written evidence proved not to be so when oral evidence was given. There was also some inconsistency regarding the date when building materials were delivered. Thus, to that extent, the Council's scepticism about the appellant's case was justified.

8. I am also mindful that the question the Council ultimately had to ask itself – whether the appellant's case had been made out on the balance of probability – is one which requires an element of judgement. Even though I don't agree with the conclusion the Council came to (that the building was not substantially completed by 12 December 2020), it was a rational and reasonable view to come to, given the information available to it up until the inquiry opened. Thus, the Council was entitled to proceed with the notice even after evidence had been exchanged. Even once witnesses had been heard, I do not consider that the evidence was so one-sided that the Council was obliged to concede ground (d).

9. The Council acknowledges that it did not check Council Tax records before issuing the notice. Doing so would have revealed that the property was registered on 6 December 2020. However, that is a single piece of evidence and does not, on its own, show that the building was substantially complete for planning purposes on that date. Thus, I am not persuaded that checking those records would have altered its decision to issue the notice. That view is reinforced by its subsequent defence of ground (d).

10. It is said that Mr Hawley applied the criminal standard of proof, having said in an email of 16 January 2025 that 'there are still doubts' as to when substantial completion took place. However, that is to draw an unfair inference on those words, which do not actually state the extent of the doubt he had at that time. On a fair reading of his evidence to the inquiry, together with relevant correspondence leading up to it, I am satisfied that he applied the correct standard of proof.

11. Analysis of some of Mr Hawley's other words in the same email is somewhat over-forensic in my view. Mr Hawley acknowledged the possibility of the appeal being allowed on ground (d), but I do not see that that amounts to an abdication of responsibility – just a recognition that the decision on the appeal lay elsewhere. The pursuit of additional information from the appellant was not unreasonable or an indication that the incorrect standard of proof was being applied. Rather, it appears to me to be part of a thorough investigative process.

12. As to ground (a), the Council was entitled to proceed on the basis that it might succeed in defending ground (d). Had it done so, the planning balance, involving an unlawful structure in the Green Belt, would have been very different to the one following success on ground (d). Even considering the use on its own, I have concluded that this is inappropriate development in the Green Belt in terms of national planning policy. Thus, a grant of planning permission could not be assumed, and ground (a) was not unreasonably defended. In deciding to issue the notice and in defending ground (a), the Council was entitled to take the view that consistent application of its planning policy outweighed the private interests of the occupiers.

Conclusion

13. For the reasons set out above I conclude that the Council did not behave unreasonably in issuing the notice, declining to withdraw the notice, or defending any of the grounds of appeal. Accordingly, the conditions for an award of costs do not exist and the application is refused.

Peter Willows

INSPECTOR