The Planning Inspectorate

Costs Decision

Hearing Held on 24 October 2017

Site visit made on 24 October 2017

by V Lucas LLB MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14th November 2017

Costs application in relation to Appeal Ref: APP/B3438/W/17/3176048 Whympenny, Godley Lane, Dilhorne, Staffordshire, ST10 2PF

- 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 Mr Slaytor for a full award of costs against Staffordshire Moorlands District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a 'Farm workers dwelling on plot of land in field no 7414 opposite Wimpney Farm, Dilhorne, Staffs' without complying with a condition attached to outline planning permission Ref Cheadle R.D.C. 11th October 1972, dated 11 October 1972 .

Decision

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

The submissions for Mr Taylor

2. These are set out in a written statement submitted prior to the hearing. In summary, they relate to enquires made by the appellant's agent to the Council regarding the validity of the condition in dispute that was attached to the original 1972 outline permission. It is stated that the submission of the appeal may not have been necessary had the Council dealt with these enquires and the award of costs is made on that basis.

The response by Staffordshire Moorlands District Council

3. There are also set out in a written statement prior to the hearing. In summary these are that the Council responded reasonably to the applicant's enquiries and that ultimately in order to test whether or not the appeal dwelling is unauthorised development an application should be made to the Council under the relevant provisions of the Act.

Reasons

4. Irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. I shall therefore consider whether that has occurred in this case.

5. The original application to which the appeal relates sought to remove the agricultural occupancy condition that was attached to the 1972 outline permission. It was therefore made on the basis that the agricultural occupancy

condition is in place and the appeal was made on that basis. The applicant did not apply to the Council for a Lawful Development Certificate (LDC) on the basis that the condition in dispute was not valid on the grounds of the legal advice he had received. It was therefore reasonable of the Council to deal with the application on the basis of what was applied for and focus on the relevant planning issues.

6. Notwithstanding this, evidence submitted from both parties shows numerous written exchanges regarding the issue of whether or not the condition was valid including reference to the Council having examined historical records dating back to 1972. The Council did therefore respond to the applicant's enquires and provided him with the relevant information that they were able to find, taking account of the passage of time.

7. Regardless of the advice that the applicant received from the Council, there was nothing to prevent an application being made for a LDC on the basis that the disputed condition was not valid. The decision to submit an application to vary a condition on an existing permission and then to submit an appeal on that basis was ultimately made by the applicant.

8. Whether or not an issue is a material consideration may ultimately be a matter for the courts. However, an appeal must be considered on the basis of what was originally applied for and, as explained to the applicant, as an LDC was not applied for the appeal could not be dealt with on that basis. It was therefore reasonable of the Council to continue to focus their appeal submissions on the planning merits of the case for removing the agricultural occupancy condition from the original permission.

9. The Council's conduct in deciding whether or not to take enforcement action relating to the occupancy condition is a matter for the Council and not a relevant planning consideration to the appeal.

10. Drawing matters together, unreasonable behaviour leading to wasted expense has not been demonstrated. For the reasons given above, I refuse the application for an award of costs.

Victoria Lucas

INSPECTOR