The Planning Inspectorate

Costs Decisions

Dates of Inquiry 27 and 28 June 2023
Site visit made on 28 June 2023

by Grahame Kean B.A. (Hons) MRTPI, Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 30 November 2023

Costs applications in relation to:

Appeal A: APP/L3245/C/21/3278441
Appeal B: APP/L3245/X/21/3283806
Appeal C: APP/L3245/X/21/3288035
Appeal D: APP/L3245/W/21/3282667
Land at Brickfield Cottage, Edgebold, Shrewsbury, Shropshire SY5 8NT

- The applications are 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 applications are made by Mr Philip Roberts for a full award of costs and a partial award of costs against Shropshire Council (the Council).
- Appeal A was an appeal against an enforcement notice issued by Shropshire Council seeking the cessation of the use of land for motor vehicle repair and maintenance and removal of a garage and timber building.
- Appeals B and C were against the refusal of applications for lawful development certificates (LDC) seeking certification of the use of the land for a mixed use for residential and car repair/maintenance use including the parking and storage of cars.
- Appeal D was against the refusal of planning permission for a garage workshop.

Decisions

1. The applications are all dismissed.

The applications and the Council's response

2. Written applications for an award of costs against the Council in respect of Appeal A and Appeal D were received by the Planning Inspectorate and responded to in writing by the Council in advance of the Inquiry.

3. At the inquiry the applicant clarified through his solicitor that in respect of Appeal A, an application was being made for a partial award of costs related to the appeal process for grounds (a) and (d) only.

4. The applicant further clarified that a full award of costs was sought in respect of Appeals B, C and D.

5. The Applicant made oral submissions to supplement his written applications and in respect of Appeals B and C. The Council then provided a further written response to these submissions and the applicant made a further oral reply.

Case for the applicant

Appeals A and D

6. The business use on the site had already been established so permission was not required for this use. Two garages were for domestic use and only one for business use. The applicant was put to unnecessary cost in the appeal and had to pay for a company to produce the appeal and to pay the Council for development that was already permitted on site.

All Appeals

7. The Council failed properly to evaluate the evidence before it took enforcement action or decided the appealed application for planning permission or the LDC applications. There was no engagement with the applicant in respect of the content of the statutory declarations. Overall the Council acted unreasonably in not dealing with the applications based on the evidence. It failed to consider granting an LDC with a reduced area. Similar considerations applied to the evidence supplied for the LDC appeals as for the ground (d) appeal in Appeal A.

8. Advice from the Council's enforcement officer had been incorrect. The witnesses in support of the appeals were persons of integrity. The local plan policies were not properly assessed by the Council and there was no material harm from the development in question.

9. Appeals B, C and D were a necessary consequence in light of the enforcement action taken by the Council. The Council should have made enquiries using powers to obtain information before issuing the enforcement notice.

Case for the Council

10. The statement by the enforcement officer that to re-build the garage would not require planning permission was unfortunate but did not justify a costs award. The mistake was corrected by the Council before the notice was issued. The advice had no legal effect on the lawful status of the garage, nor would it have had if the destroyed garage were re-built or a new building were erected. The officer's mistake was compounded by the applicant's architects and previous planning consultants who confirmed the new building did not need permission.

11. The Council had reasonable grounds to consider that the demolition of the previous building on site and its replacement with a new larger building and erection of a separate timber building was a new planning chapter for the site, due to the substantial change from that granted in the 2014 planning permission.

12. After an earlier planning application [not appealed] was refused, the enforcement team sought to engage with the applicant to resolve the breach of planning control but was unable to do so and the notice was issued on 15 June 2021.

13. The Appellant failed properly to consider the Planning Policy Guidance (PPG) on costs awards. There was good reason to refuse the various applications and issue the notice. The planning merits of the garage building enforced against were not sufficiently strong as to make it unreasonable for the Council to refuse permission for its retention.

14. The applicant's suggestions that the unauthorised development was resisted due to the neighbour using her connections with the Council, were unsubstantiated.

15. The Council acted reasonably at all stages of the enforcement process and the issuing of an enforcement notice was necessary. The maxim "*he who comes into equity must come with clean hands*" should be applied. The applicant's agents acted unreasonably in that voluminous documentation was supplied of which little was referred to, they lacked knowledge of some of their own evidence, and introduced numerous new issues and documents, namely as to a putative historic use of the site, a unilateral undertaking, and a claimed lack of authority to issue the notice, the latter being a serious matter which the Council felt obliged to resolve during the inquiry. Thus the applicant did not make these applications with 'clean hands' but himself acted through his agents unreasonably.

Reasons

16. PPG advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can be procedural or substantive, relating to the issues arising from the merits of the appeal. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviours and actions at the time of the application can be taken into account.

17. In general the applicant's behaviour or that of his agent, which may itself have been unreasonable, should not be relevant to the merits of their own application for costs unless the actions of applicant and respondent are inextricably linked. And, on examination of the maxim said to apply here (a succinct version is "*ex turpi causa non oritur actio*" which I translate as "out of a bad act, motive or reason, no (good) cause of action will arise") it appears that this criterion is built into the proper application of the principle, at least what I will call the narrow principle in which it is often understood.

18. In short, the behaviours alleged are unconnected to those of the Council. For example, the late evidence submitted to the inquiry and abrupt changes in the theory of the appeals did not cause the claimed unreasonable behaviour of the Council. The loss suffered by the appellant was of his own making because, as was found in the appeal decisions after due enquiry, he failed to discharge the burden of proof necessary to establish continuous use over any precisely defined area for the requisite period, and failed to persuade the decision-maker that the benefits to retention of the development outweighed the harm. But in any case, it is not the Secretary of State's policy as I understand it to deny such a person the opportunity of applying for a costs award where specific unreasonable behaviour in the appeals process causes them identifiable loss.

19. Furthermore, in the wider sense in which the principle is sometimes invoked, and I fear is being invoked here, to allow a simple distinction between a "deserving" and "undeserving" applicant in a statutory appeal process, would be more invidious and divisive in the long run, than would the occasional public outcry at the supposed inconsistency between a failure on the substantive issues but a procedural "win" for the loser.

20. All that said, the applications largely re-run the merits of the appeals, which were lost. The Council plainly evaluated the evidence robustly before it took enforcement action or decided the planning and LDC applications. The advice from the previous enforcement officer had been incorrect but this did not cause unnecessary expense in the appeals process. Overall, it acted reasonably based on the evidence. Therefore I find that there was no unreasonable behaviour that caused unnecessary expense and the applications are not granted.

Grahame Kean

INSPECTOR