



Costs Decision

Inquiry held on 14 June 2011

Site visit made on 13 June 2011

by D Harrison BA DipTP MRTPI

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

Decision date: 20 July 2011

Costs application in relation to Appeal Ref: APP/B3410/C/10/2137512

Town End Farm, Piccadilly Lane, Upper Mayfield, Ashbourne, DE6 2HP

- 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 P W G Brook for a full award of costs against East Staffordshire Borough Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the erection of a dwelling.
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Decision

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

The submissions for Mr P Brook

General submissions

2. Mr Brook's advocate, Mr Prestwich, did not refer to Circular 03/2009 *Costs Awards in Appeals and Other Planning Proceedings* but made his application in very general terms for the whole costs of preparing for and attending the Inquiry. He accepted that the claim would exclude any costs already awarded on 23 December 2010 in connection with an abortive appeal against an earlier enforcement notice which was withdrawn by East Staffordshire Borough Council on 26 August 2010. (Ref: APP/B3410/C/10/2128312).
3. He was concerned about what he described as the "bloody-minded attitude" of the Council in issuing the enforcement notice when there had been no complaints about the alleged unauthorised development from anyone. No investigation of the need for the presence of an agricultural worker on site had been carried out by the Council.

The appeal on ground (b)

4. The description of the alleged unauthorised development was wrong – it was not a dwelling.

The appeal on ground (d)

5. If Council officers had investigated the matter they would have found records that would confirm the appellant's case on ground (d).

The appeal on ground (a)

6. The Council had not had regard to its own policy and had not produced a case against the alleged unauthorised development. It was unreasonable to argue that there was not a sound and viable agricultural business at Town End Farm.

The appeal on ground (f)

7. The requirement to "demolish the dwelling" (Requirement (2)), was unreasonable because the structure could be kept on the site and used for purposes ancillary to the agricultural use of the land.

The appeal on ground (g)

8. The compliance periods set out in the notice were too short and the consequences for the appellant and his employees had not been thought through.

Summary

9. The appellant's case is that the Council's decision to issue the enforcement notice was unreasonable, and the cost of appealing against the notice under all five grounds of appeal had been incurred unnecessarily.

The response by East Staffordshire Borough Council

General submissions

10. The appellant had not complied with the advice at paragraph A31 of Circular 03/2009 which states that "The principle of early disclosure of appeal evidence should apply equally to any intention to seek an award of costs. Costs applications should not therefore rely on using surprise as a tactic". The appellant's advocate had not explained why this advice had not been followed.

The appeal on ground (b)

11. There had been reasonable grounds for the Council to conclude that there had been a breach of planning control. There had been no serious misunderstanding of the relevant case law.

The appeal on ground (d)

12. The Council had demonstrated that there was a reasonable basis for resisting the appeal on this ground.

The appeal on ground (a)

13. The Council had not just made a "policy objection" to the development. There was a real planning objection which had been demonstrated by the Council. The site was outside the settlement boundary of any town or village. The burden was upon the appellant to prove that there were grounds for an exception to the restrictive policy relating to new dwellings in the countryside on grounds of agricultural need.

The appeal on ground (f)

14. The Council had demonstrated that there was a reasonable basis for resisting the appeal on this ground.

The appeal on ground (g)

15. The Council had demonstrated that there was a reasonable basis for resisting the appeal on this ground.

Summary

16. The Council had not acted unreasonably and had demonstrated that it had been necessary to issue the enforcement notice.

Assessment

17. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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. I consider each ground of appeal in turn.

The appeal on ground (b)

18. Although I decided to "change the label" by correcting the allegation in the notice the Council's decision to describe the alleged breach in the way they did was not unreasonable.

The appeal on ground (d)

19. The Council's response to the appeal on ground (d) was comprehensive and convincing rather than unreasonable.

The appeal on ground (a)

20. The Council produced a case supported by evidence justifying the service of the notice on the grounds that there was no "agricultural need" for a dwelling (or a mobile home) on the site.

The appeal on ground (f)

21. The Council produced a case supported by evidence justifying the need for the two requirements of the notice. The variations to the requirements which I made arose from the correction to the allegation and did not reflect any unreasonable behaviour on the part of the Council.

The appeal on ground (g)

22. The appeal on ground (g) succeeded and the time allowed for the cessation of the residential use was increased from 30 days to 6 months. However, the Council defended its decision to require the shorter period and it was a matter of judgement as to whether the period needed to be increased.

Conclusion

23. The Council did not act unreasonably in deciding to issue the enforcement notice, nor did it act unreasonably in defending its decision at the Inquiry. No unnecessary expense was incurred by the appellant in pursuing the appeal and an award of costs is not justified.

David Harrison

Inspector