



Costs Decision

Hearing held on 21 May 2013

Site visit made on 21 May 2013

by A R Hammond MA MSc CEng MIET MRTPI

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

Decision date: 12 June 2013

Costs application in relation to Appeals Ref: APP/H0738/A/13/2190787 & APP/H0738/C/13/2190861 High Farm, Redmarshall, Stockton on Tees, TS21 1EU

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Paul Baker for a full award of costs against Stockton-on-Tees Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for an agricultural building and an appeal against an enforcement notice alleging the erection of an extension to an existing agricultural building.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr. Paul Baker

2. The Council acted unreasonably in refusing planning permission and issuing the Enforcement Notice having failed to give weight to the fact that the original reason for refusal was flawed in that the building was not constructed over the water main but close to it; and then to pursue enforcement action merely on the assertions of Northumbrian Water Limited (NWL) without seeking independent advice.
3. NWL were shown to have a covenant covering a certain distance from the mains and had been offered a wider covenant if they paid to have the building relocated but they had failed to pursue this offer which demonstrated the lack of substance in their assertions.
4. Furthermore the requirement to remove from the land all material resulting from the removal of the extension contradicts the requirement in the working statement that it be dismantled carefully and stored in a designated area for re-use.
5. Notwithstanding the application for a full award of costs, and without prejudice to that application, the applicant seeks a partial award of the costs incurred in dealing with the method statement and risk assessment which were drafted by NWL and appended to the Enforcement Notice without proper consideration by the Council.

The response by Stockton on Tees Borough Council

6. The application for planning permission was the 2nd retrospective application and the Council acted reasonably in being guided by the response of a statutory

consultee. The reason for refusal of planning permission was clear, referring to "too close proximity to a 42" and a 36" high pressure steel water mains".

7. The Council did not consider that it was necessary to seek further advice following the representations of NWL.
8. Negotiations had been ongoing for a protracted period with no satisfactory outcome in sight. It was considered expedient to issue the Enforcement Notice as it was approaching 4 years from the date that the breach occurred.

Reasons

9. 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.
10. The Council were justified in accepting the representations of NWL as a statutory consultee and were not obliged to seek further advice from an independent party. The Council did not, therefore, act unreasonably in pursuing enforcement action.
11. However, whether or not the requirements of an Enforcement Notice can refer to attached appendices, the requirements must comply with the terms of the Act. The recipient is entitled to understand precisely what he is required to do.
12. The method statement and risk assessment appended to the notice are far from clear and contain ambiguities and typing errors. The Council issued an Enforcement Notice without proper consideration of those appendices and their accuracy and compliance with the Act.
13. The Council did act unreasonably causing the appellant to incur unnecessary costs in attempting to deal with the purported requirements of the Enforcement Notice, that is to dismantle the building in compliance with the unclear and ambiguous method statement and risk assessment.
14. I therefore conclude that the appellant did incur unnecessary or wasted costs as a result of the Council's failure to properly consider the method statement and risk assessment and their applicability.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Stockton-on-Tees Borough Council shall pay to Mr. Paul Baker, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing specifically with the appendices to the Enforcement Notice.
16. The applicant is now invited to submit to Stockton-on-Tees Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Hammond
INSPECTOR