Planning Inspectorate

Costs Decision

Hearing held on 26 November 2024

Site visit made on 26 November 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2024

Costs application in relation to Appeal Ref: APP/W1145/C/24/3340351 Land at Grid Ref 244670 125921, Hamilton Close, Bideford, Devon EX39 3DS

- The application is 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 application is made by Ms Helen Sheard for a full award of costs against Torridge District Council.
- The appeal was against an enforcement notice alleging the change of use of the Land from agricultural to a mixed use of storage (B8) and agricultural.

Decision

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

The submissions for Helen Sheard

2. The costs application was made orally at the hearing. The main points are set out below.

3. The appellant is entitled to use the land for the matters alleged. This means that there has been no breach of planning control and, therefore, the bringing of enforcement action in the first place was unreasonable. All costs incurred during the appeal proceedings are wasted expense.

4. The basis of the Council's defence, that there is no extant planning permission on the Land, is contrary to the admission made by a previous enforcement officer who accepted during earlier legal proceedings that this is not the case. In considering whether to take enforcement action, the Council had no regard to this planning history despite it having been brought to enforcement officers' attention.

5. Furthermore, information about the planning history and previous discussions was not passed from one officer to another and this led to a misunderstanding of the facts. The officer's misunderstanding of the facts was then passed to neighbouring residents when they were notified of the appeal and this inflamed an already tense situation. Having properly considered the planning history, the principles established by *Mansi v Elstree Rural District Council* [1964] 16 P.& C.R. 153 would indicate that no action could be taken.

6. Council officers have provided no assistance. Instead, when one argument has been demonstrated to be incorrect, they have sought to pursue alternative reasons to take action. Instead of accepting the planning history, the Council appear to be constantly searching for new reasons to take action. Other

developers are treated more favourably, with no action being taken for more serious breaches of planning control.

7. The Council failed to communicate with the appellant using an address she had provided and now seek to use this as a reason for not understanding the site history and appellant's use of the Land. Instead, her property was damaged through the fixing of notices to it. The repeated actions of the Council, including the clearance from the site of personal possessions, has caused significant harm to the appellant's health and wellbeing.

The response by Torridge District Council

8. The response was made orally at the hearing. The main points are set out below.

9. The grounds on which costs can be awarded are clearly set out in the Planning Practice Guidance (PPG). Simply being wrong is not unreasonable behaviour. The Council took legal advice and, following the case of *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30, determined that planning permission 1/0339/2007/FUL ("the 2007 Permission") could not be built out. Even if the Council are wrong on this point, they have provided a reasoned argument to support their judgement and, therefore, have not acted unreasonably. In any case, reliance on the principles set out in *Mansi* requires the items on site to be related to its development. They are not.

10. The Council has fully investigated the breach of planning control. They have gone through normal processes, including the service of Planning Contravention Notices seeking to establish facts, that were not returned. Correspondence was sent to the address recorded by the Land Registry and placed on the site. That is a fair and reasonable way of serving a notice.

Reasons

11. Parties in planning appeals normally meet their own expenses. However, the 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.

12. Much of the appellant's case rests on her claimed ability to construct a dwelling pursuant to the 2007 Permission. While Council officers may have accepted that permission as extant in the past, the case of *Hillside* is comparable and, as set out in the appeal decision, confirms that it is not longer possible to continue that development. Previous Council comments on the matter predate that Judgement, so a change in position is not unreasonable.

13. During the Hearing, it emerged that a dwelling could be constructed pursuant to a subsequent planning permission ref 1/0188/2011/FUL ("the 2011 Permission"). However, this appears to be the first time that there has been any suggestion made that it might be available to the appellant. While the Council should research the entire planning history, they have not acted unreasonably when the appellant has never before sought to rely upon that permission.

14. In any case, the Council's position at the Hearing was that the plots within the 2011 Permission are not severable. As such, even if they had previously considered that permission as extant, it is unlikely to have led to a decision not

to serve the Notice. I also found that it was more likely than not that the majority of items were not on the Land in connection with the building of a house. No unreasonable behaviour has, therefore, arisen in respect of the Council's consideration of the planning history in connection with this case.

15. The appellant makes great criticism of the Council's general behaviour, external and internal communication, and failure to pass information from one officer to another. However, whether or not that is well founded, the Council has provided reasoned justification for taking enforcement action.

16. Irrespective of the long history and poor relationship between the appellant and the Council's officers, I have, ultimately, found that there has been a breach of planning control. There is no reason to find that better communication with the appellant, for example, via the address she had provided to the Council, would have avoided the breach of planning control, resulted in an amicable resolution to the breach, or prevented the taking of enforcement action. Therefore, even if there has been unreasonable behaviour in respect of communication, it has not resulted in wasted expense in the appeal process.

17. It is abundantly clear that the appellant has suffered distress related to the actions of the Council and others. However, that cannot be attributed to unreasonable behaviour in connection with these appeal proceedings. The Council's decisions to take, or not to take enforcement action in other cases or at other sites has little to do with the case before me, which must be determined on its own merits.

18. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted. The application is refused.

M Bale

INSPECTOR