



Costs Decision

Virtual Inquiry held on 12 January 2021 & 7 -10 June 2021

Site visit made on 10 June 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 03 September 2021

**Costs application in relation to Appeal Ref: APP/B3410/C/19/3232151
Banks Farm, (also known as "Mince Pie Hall"), Hollington Road, Rocester,
Staffordshire ST14 5HY**

- 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 East Staffordshire Borough Council for a partial award of costs against Bamford Property Group Limited.
 - The inquiry was in connection with an appeal against an enforcement notice alleging: - Without planning permission the erection of a building in the approximate position shown cross hatched on the attached "Plan 2" to the enforcement notice.
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Decision

1. The application for a partial award of costs is refused.

The submissions for East Staffordshire Borough Council

2. The costs application was submitted in writing at the Inquiry.

The response by Bamford Property Group Limited

3. The response was submitted in writing and presented orally at the Inquiry.

Reasons

4. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice. It goes on to advise that an appellant is at risk of an award of costs being made if an appeal had no reasonable prospect of succeeding. Examples are given of situations where this may occur.¹
5. The appeal was lodged on grounds (c) that those matters (if they occurred) do not constitute a breach of planning control and grounds (a) and ground (g) were also pleaded although I did not need to consider these latter grounds as I allowed the appeal on ground (c).

¹ Paragraph: 053 Reference ID: 16-053-20140306

6. The applicant considers that the appellant must have or should have appreciated that the ground (a) appeal had no reasonable prospect of succeeding for a number of reasons. In 2016, applications were submitted for planning permission/listed building consent to create a central green keeping and maintenance facility for the golf course at the appeal site (hereon cited as the 2016 Apps). These applications were withdrawn after objections were raised to the applications by Historic England. The applicant considers that whilst the 2016 Apps involved demolition of some of the existing outbuildings, the proposed building was in essentially the same location as the building which is the subject of the ground (a) appeal. It also considers that the ground (a) appeal was bound to fail unless the appellant could establish that there are no suitable alternatives to the appeal building and that there is no reasonable basis for the appellant's contention that there are no such alternatives.
7. The appellant has stated that they have addressed the planning merits in their main submissions and why planning permission, permanent or temporary, should be granted. They also consider their case is supported by a professional witness who gave evidence in support of the appeal and who is best placed to explain the need for the subject building and the reasons why the alternatives introduced by the applicant cannot be relied upon.
8. I did not need to consider the ground (a) appeal therefore, I have not made a decision on the planning merits of retaining the appeal building on a temporary or permanent basis.
9. I acknowledge that Historic England stated in 2016 that the loss of the existing historic buildings, and the erection of the proposed greenkeeper's barn, would cause substantial harm to Mince Pie Hall and its setting. In response to this appeal they state that in their view the new structure undoubtedly causes serious harm to the significance of the Grade II* listed heritage asset.
10. The 2016 Apps were withdrawn due to the objections raised by Historic England, but they involved the demolition of parts of the traditional farm buildings and the erection of a building that replaced those demolished parts and infilled the courtyard. Whereas the appeal building has infilled the courtyard, but the traditional buildings have not been demolished. Therefore, the appeal building was a different development even though the building is in a similar location to that proposed within the 2016 Apps.
11. The level of harm to the significance of the listed building is disputed. However, both main parties agree that harm is caused to that significance by the retention of the appeal building. The level of harm to the significance of the listed building is a matter of planning judgement. Nevertheless, paragraph 200 of the National Planning Policy Framework (the Framework) states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
12. Furthermore, the judge in the *Forge Field*² case stated where there are clear planning benefits associated with the development but also clear objections to it, the authority may have to consider whether there is a more appropriate site for it. In that case it was common ground that alternative sites had to be

² R. (*Forge Field Society*) v *Sevenoaks DC* [2014] EWHC 1895 (Admin) [2015] J.P.L. 22

considered for two main reasons one of which included the harm to the setting of a listed building.

13. A number of alternative sites for the appeal building or alternative buildings that could be utilised in a similar way were considered within the written and oral evidence to the Inquiry. Both parties outlined whether, in their, opinion the suggested alternatives were suitable. The assessment of the alternatives involves subjective planning judgements on that suitability and whether there is clear and convincing justification for the harm to the heritage asset.
14. The overall planning balance would have to consider the weight to be given to that justification, the harm to the heritage asset and the benefits, including the public benefits, of the development. Taking into account all of the above, despite the strength of policies weighing against the development, there are numerous elements that involve subjective planning judgements to be made. I do not therefore agree that it can be said that the ground (a) appeal had no reasonable prospect of succeeding. I find nothing unreasonable in the appellant's decision to lodge the appeal.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

D. Boffin

INSPECTOR