The Planning Inspectorate

Costs Decision

Site visit made on 10 January 2012

by Gary Deane BSc(Hons) DipTP MRTPI

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

Decision date: 31 January 2012

Costs application in relation to Appeal Ref: APP/H1033/A/11/2162602
Land at Moult Farm, Eccles Fold, Whitehough, High Peak SK23 6BY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by High Peak Borough Council for a full award of costs against Mr Robert McDermott.
- The appeal was made against the refusal of planning permission for the erection of an open boarded timber fence on land at Moult Farm.

Decision

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

Reasons

1. 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.

2. The appeal follows a recent appeal decision in respect of a similar development at broadly the same location where the Inspector decided that the proposal was unacceptable. As the Council considers that the circumstances have not materially changed in the intervening period, a costs award is sought primarily on the ground that, on the basis of the available evidence, the appeal plainly had no reasonable prospect of succeeding.

3. The appellant has produced supporting evidence at both the application and appeal stages to demonstrate, in his opinion, the change in circumstances since the determination of the previous appeal. Specifically, the height, design and position of the new fence located near to the northern boundary of Garden Cottage all differ compared with the previous appeal scheme. To my mind, these differences, when taken together, amount to a material change in circumstances to those before the Council and the previous Inspector when they assessed the earlier proposal.

4. In those circumstances, the appellant was entitled to pursue the appeal in the belief that the outcome was not necessarily a forgone conclusion. While I share the Council's view that the proposal does not satisfactorily resolve its concerns or those raised by the previous Inspector, each proposal should be considered

on its individual merits, which I have done in this case. In that context, it is my view that the appellant has not behaved unreasonably in pursuing the appeal.

5. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated.

Gary Deane

INSPECTOR