The Planning Inspectorate

Costs Decision

Site visit made on 25 June 2013

by Michael R Moffoot DipTP MRTPI DipMgt MCMI

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

Decision date: 18 July 2013

Costs application in relation to Appeal Ref: APP/H1033/A/13/2193485 Birch House, Birch Vale, High Peak SK22 1DH

- 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 an award of costs against Mr & Mrs T B Lawton.
- The appeal was against the refusal of planning permission for residential development.

Decision

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

Reasons

2. Circular 03/2009[1] 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.

3. Para B13 of the Circular states that an appellant is at risk of an award of costs being made against them if, on the basis of the available evidence, the appeal or ground of appeal plainly had no reasonable prospect of succeeding on the basis of the application submitted to the planning authority. It goes on to advise that this may occur when the appellant is seeking planning permission for development in the Green Belt which would be inappropriate according to PPG2: *Green Belts*. In this situation, the Circular states that it will not be sufficient for the appellant to rely on a genuine belief that there are very special circumstances to justify overriding the Green Belt presumption stated in PPG2. It is for the appellant to show why permission should be granted by demonstrating what the very special circumstances are, and providing evidence to justify an exception to general Green Belt policy.

4. PPG2 has been replaced by the *National Planning Policy Framework.* In relation to proposals in the Green Belt, it states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt with the exception of certain types of development, including *"limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development".*

[1] Circular 03/2009: *Costs Awards in Appeals and Other Planning Proceedings*

5. In this respect the current appeal proposal differs from the previous one in 1991 for residential development on the land, which was considered under the provisions of PPG2 which did not refer to partial or complete redevelopment of previously developed sites as being an exception to the normal presumption against new buildings in the Green Belt.

6. It is clear that extensive, pre-application discussions took place between Council officers and the applicants' agent at which the parties expressed conflicting views regarding, amongst other things, the application of Green Belt policy to the proposal. The applicants have maintained throughout that the proposal accords with the Framework as it involves redevelopment of a previously developed site which would not have a greater impact on the openness of the Green Belt or the purpose of including land within it than the existing development.

7. Although I have reached a contrary view to the applicants on the merits of the case, they have provided sufficient evidence to support their view that the proposal does not amount to inappropriate development in the Green Belt. In the alternative, they have submitted that in the event that I find the proposal constitutes inappropriate development, other considerations amount to the very special circumstances necessary to justify the proposal. On the basis of the pre-application discussions and the evidence submitted with the application and during its processing, it was not unreasonable for the applicants to consider that their proposals had a reasonable prospect of succeeding.

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

Michael R. Moffoot

Inspector