

APPEAL BY MR STEPHEN FEARNs AGAINST THE DECISION OF THE COUNCIL TO REFUSE TO GRANT A LAWFUL DEVELOPMENT CERTIFICATE FOR THE EXISTING USE OF LAND AS GARDEN AT LYMES FARM HOUSE, LYMES ROAD, BUTTERTON.

<u>Application Number</u>	14/00240/ELD
<u>LPA's Decision</u>	Refused by delegated authority on 5 June 2014
<u>Appeal Decision</u>	Dismissed
<u>Costs Decision</u>	i) Full award of costs against appellant ii) Applicants costs claim refused
<u>Date of Appeal Decision</u>	2 February 2014

The appeal decision

The appeal was dealt with by way of Public Inquiry. The Inspector considered that the main issue was whether the Council's decision to refuse lawfulness was 'well founded'. All evidence was taken on oath. The key points of the Inspector's decision are summarised as follows:

- Lymes Farm has been the subject of various enforcement investigations by the Council since 2001.
- The burden of proof is on the appellant and the standard of proof is the balance of probabilities. It is not necessary for the appellant's own evidence to be corroborated for it to be accepted but if the Council has conflicting evidence this could indicate that the appellant's case is less than probable.
- It was evident from Mr Fearn's approach to the inquiry that he did not consider that the onus was on him to demonstrate on the balance of probability that a material change of use had taken place. Instead, he appeared to believe that the Council should investigate its files to prove the case, but even when the Council referred to their files, the appellant's interpretation of them was at variance with the facts.
- The appellant referred to two letters which made no reference to domestic garden use and therefore did not provide any evidence to support the appellant's case. A third letter did refer to use of land as a domestic garden and in response the appellant, having clearly acquainted himself with aspects of planning guidance and legislation, was of the view that the site was in agricultural use and not within the domestic garden. He stated the structures on the land were for agricultural purposes.
- Following investigations the Head of Planning reached the conclusion in 2007
- The other evidence (including an enforcement report and its conclusions; a witness statements; and aerial photographs) did not, in the Inspector's opinion, support a conclusion that a material change of use has taken place for a continuous period of ten years. If a change of use had taken place then the ten year period would have been broken in view of the appellant's unequivocal assertion in March 2007 that the land was in agricultural use. Additionally the use of part of the site for the stationing of a caravan for residential purposes indicates a break in use.
- The appellant failed to identify with any precision whether a smaller part of the appeal site could be identified as having changed its use to a domestic garden for the required period. However, on the basis of the evidence it is possible that the part of the appeal site consisting of the stable and greenhouse has been used as a domestic garden for a considerable period of time but the Inspector could not conclude that this was probable based on the appellant's assertions about the agricultural use of the buildings and the land. The evidence in respect of other parts of the appeal site is insufficient to conclude that any such areas could be granted lawfulness for use as domestic garden.
- The evidence is quite clear that the appellant has not demonstrated on the balance of probabilities that a 10 year period of continuous use of the land as a domestic garden.

- The Inspector concluded that the Council's refusal to grant a lawful development certificate in respect of the use of land as residential garden was well founded.

Costs Decisions

Costs applications were made by both the Council and by Mr Fearn. . The key points of the Inspector's decision are summarised as follows:

- The appellant failed to submit a proof of evidence and his statement of case referred only to the three letters from the Authority of 2001, 2007 and 2012, two of which were found to refer to buildings and not to the use of land. His bundle of emails did not constitute a proof as there was no concisely expressed argument upon which he sought to rely.
- Mr Fearn's contention that the Council had evidence that he was using agricultural land as domestic garden is an inadequate basis on which to appeal where the onus of proof is clearly on the appellant to prove the lawfulness of the use on the balance of probabilities.
- Although not professionally represented, Mr Fearn took the time and trouble in 2007 to acquaint himself with planning law in respect of agricultural development. For the appeal he had also looked at the Procedural Guidance, which indicates that while a Planning Authority should co-operate with an applicant, '.....they need not go to great lengths to show that the subject of the application is or is not lawful'. The Inspector was satisfied that the appellant had a reasonable knowledge of procedural matters beyond what would normally be expected of a layman.
- Mr Fearn repeatedly referred to other evidence at the inquiry that he chose not to introduce as he said that he had been advised by the Planning Inspectorate that he could be liable to an award of costs if he introduced late evidence. He also persisted in referring to the manner in which the Council had dealt with matters over a number of years and in dealing with the application, and claimed that the Council had failed to follow the guidance in the Procedural Guide. The implications of Mr Fearn's contentions is that had the Council searched its files, followed the Procedural Guide, met with the appellant prior to the decision, then the Certificate would have been issued and an inquiry would have been avoided. However, the appellant produced nothing in evidence to suggest that the outcome of the application or the appeal would have been different.
- The fact that the appeal was dealt with by way of inquiry and not by written representations would not have altered the outcome of the appeal or the costs application. Because of the nature of the evidence relied on by the appellant, it was necessary to hear this on oath and for the witnesses to be cross-examined.
- The failure of the appellant to submit a proof of evidence disadvantaged the Council. Repeated references to the manner in which the Council dealt with the application and the appeal wasted inquiry time and was distinctly unhelpful, despite frequent reminders from the Inspector for the Mr Fearn to focus on the necessary facts to support his case.
- The circumstances led to an unnecessary appeal resulting in an inquiry which has led to wasted expenditure by the Council.
- Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, was therefore demonstrated and a full award of costs to the Council was justified.
- With respect to Mr Fearn's claim for costs. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, was not demonstrated.

Recommendation

That the decisions be noted.