The Planning Inspectorate

Costs Decision

Site visit made on 10 August 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

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

Decision date: 21 September 2016

Costs application in relation to Appeal Ref: APP/D3315/C/15/3141203
Land at Walford Cross Units, Walford Cross, Taunton, Somerset TA2 8QP

- 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 Mr Nigel Dunn of Chipmunk South West Limited for a full award of costs against Taunton Deane Borough Council.
- The appeal was against an enforcement notice alleging the change of use of the site from B1 Office and B8 Storage and Distribution to B2 General Industrial Use as a wood processing business.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The Submissions for the appellant

2. The Council served an unsigned and undated Notice, and has subsequently accepted that they were at fault and that the EN was not properly served.

3. The Council has not engaged in positive discussion or correspondence with the appellant following the serving of the Enforcement Notice ("the EN") to clarify its intentions. Correspondence in respect of compliance with the EN following the removal of the boilers and driers was not received until some 7 weeks after their removal and after the appeal had been significantly progressed.

4. The Councillors rejected the Officer's recommendations without any substantive evidence to support their reasons for refusal. No professional or technical evidence has been provided to contradict the findings of the submitted professional technical reports which accompanied the planning application.

5. The steps required to comply with the requirements of the EN were excessive. It did not take into account the permitted usage under the extant B1/B8 permission. The Notice should have identified precisely the nature of the equipment and it activity and its location on a plan that needed to be removed and ceased. The EN is unclear, failing to properly identify the activity which represented the breach and is therefore unreasonable.

6. In light of the above, unnecessary and wasted expense has been incurred in professional fees to prepare and submit the enforcement appeal and associated documents.

The response by the Council

7. The Council made its decision based on the information and evidence supplied by the appellant and comments received in accordance with the legislation and procedures. The decision was taken to issue an EN for an activity that had been refused planning permission and for which a number of complaints had been received.

8. The activity that is subject to the EN is unauthorised and the appellant has not pleaded ground (b) in making his appeal. Rather, he has relied on ground (a) that planning permission should be granted. Thus the expense of preparing this aspect of the appeal is not unnecessary.

9. The Council did communicate with the appellant during the course of the appeal, including a telephone conversation regarding the content of the EN. The activity is unauthorised and the appellant is seeking to regularise the activity through ground (a). It is not considered that any additional communication would have made any difference to the amount of resource expended by the appellant. Any perceived lack of communication has not put the appellant to any unnecessary expense.

10. It was the appellant's decision to comply with the EN despite pursuing the appeal against the Notice. Thus, it does not consider that the appellant has incurred any unnecessary or wasted expense.

The response by the appellant

11. In refuting the claims in the Council's response, and in addition to elaborating upon the points already made, the appellant adds that the Council is duty bound to prepare an EN which is clear and unambiguous. The plan which was submitted as part of the Council's appeal submissions identifies the entire site and not just the location of the boilers and driers. Not all the activity on the site is unauthorised; storage is authorised and should not therefore be referred to in the EN.

Reasons

12. The Government's Planning Practice Guidance ("the PPG") 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. The appellant suggests that the Council's behaviour falls into several categories of unreasonableness as outlined above and set out in the PPG.

13. The shortcomings of the EN are such that I have found that it is a nullity. The Council has a duty to ensure that the Notices served and the accompanying note are clear, accurate, complete and correctly worded in all respects. The Council had the option of withdrawing the EN and issuing a second in light of the concerns regarding its completeness and accuracy. It did not. I therefore conclude that an EN which was defective on its face amounts to unreasonable behaviour causing the appellants to incur unnecessary expense in appealing. A full award of costs is therefore being made in this respect.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and County Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Taunton Deane Borough Council shall pay to Chipmunk South West Limited, the costs of the appeal proceedings described in the heading of this decision.

15. The appellant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of these costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for detailed assessment by the Senior Court Costs Office is enclosed.

Melissa Hall

Inspector