

Costs Decision

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 5 October 2016

**Costs application in relation to Appeal Ref: APP/M3835/C/16/3142339
Land known as the Former United Reform Church, 7a Shelley Road,
Worthing, West Sussex, BN11 1TT**

- 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 Salwan Rassam for a full award of costs against Worthing Borough Council.
 - The appeal was against an enforcement notice alleging the laying of a hardstanding.
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Decision

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

Procedural Matter

2. The Council was invited to respond to the Appellant's application but did not do so.

The application by the Appellant – main points

3. The Appellant's application was made in writing and was on the basis that the Council had acted unreasonably leading to unnecessary costs being incurred by the Appellant.
4. The Council, on its own case, was enforcing against operational development that causes no harm to amenity. The notice was flawed on many levels and the Council was trying to control a lawful ancillary use via an inappropriate allegation of operational development and the notice was not clear on its face. The car parking activity has previously been accepted as ancillary to the primary use and has not actually occurred. Any amendment of the notice would be prejudicial to the Appellant.

Reasoning

5. The Planning Practice Guidance (the Guidance) advises that costs may 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 process¹.
6. In the appeal decision I found that the notice was invalid and that any correction would have caused injustice to the Appellant; the notice was

¹ Planning Practice Guidance: Appeals paragraph 030

therefore quashed. In those circumstances the merits of the Appellant's case made on the various grounds of appeal with regard to such matters as whether the hardstanding had been used for car parking and whether car parking was an ancillary use did not fall to be considered. Those matters cannot therefore be taken into account in the costs application.

7. The matter to be determined is whether the issuing of the notice amounted to unreasonable behaviour with the result that the Appellant incurred wasted expense in the appeal process.
8. A notice dated 21 October 2015 was withdrawn by the Council following a letter from the Inspectorate seeking comments on the drafting of the notice and whether it complied with s.173 of the 1990 Act. The notice in this appeal was issued at the same time as the previous notice was withdrawn and is in virtually identical terms to that of the previous notice. The Appellant made a preliminary case that the notice was invalid; that it was incapable of correction without injustice; and that it should be quashed. In its statement the Council put forward a case why the notice was not invalid but, as I have stated above, I found that it was invalid and that it could not be corrected as to do so would cause injustice to the Appellant.
9. The Guidance advises that although a Council has a general discretion to take enforcement action it is expected to exercise care when deciding to issue a notice and is at risk of an award of costs if it is concluded that an appeal against a notice could have been avoided if it had ensured that the notice was accurate². Given the similarity between the withdrawn notice and the notice in this appeal I consider that the Council acted unreasonably in issuing a second notice with the same flaws. In reaching this view I note that the Council appeared to be aware of the inconsistencies in the notice in that it says in its statement that 'it is not the physical works of the laying or the hardstanding which are harmful rather the resulting use of the area so created' and 'a second notice could be served relating to the unauthorised change of use of the land for car parking'.
10. The issuing of the notice resulted in the Appellant incurring expense in making the appeal which was, in the event, wasted and unnecessary.

Conclusions

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Practice Planning Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Worthing Borough Council shall pay to Mr Salwan Rassam the costs of the appeal proceedings described in the heading of this decision.
13. Mr Salwan Rassam, to whose agents a copy of this decision has been sent, is now invited to submit to Worthing Borough Council details of those costs with a view to reaching agreement as to the amount. In the event that the parties

² Planning Practice Guidance: Appeals paragraph 048

cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Gloria McFarlane

Inspector