
Costs Decision

Hearing held on 2 August 2016

Site visit made on 2 August 2016.

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 23 November 2016

Costs application by the appellant in relation to

Appeal Ref: APP/L2630/X/16/3142008

Grove Farm, Middle Road, Denton, Harlestone IP20 0AH

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Stuart Hardwick Carruthers for a full award of costs against South Norfolk District Council.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for:
 - i. Proposed light industrial use for the manufacture, repair and storage of goods used to provide services at festivals.
 - ii. The proposed residential use of a lawful dwelling.
 - iii. The proposed residential use of a former dwelling.
 - iv. The proposed equine use of land.
 - v. The proposed storage of caravans, mobile homes et cetera on land used to provide residential services.
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Decision

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

The submissions for the appellant

2. The Council have failed to determine the application within eight weeks. They have engaged in the withholding of information, and have identified that their registered decisions are not definitive.
 3. The Council's Chief Executive has failed to provide redress for the revocation of the owners' use of their land as a result of Council staff prosecuting enforcement notices that are nullities. They have declined to determine the application because they are aware that members of their staff have misled the Secretary of State, the Local Government Ombudsman, the Courts and others to both secure and act upon enforcement notices that are not effective.
 4. Members of the Council's staff have demonstrably sought to withhold information from the Secretary of State to prevent both planning applications and a certificate of lawful development being awarded for the land.
 5. These acts have resulted in an appeal being necessary against the non-determination of a LDC, and its failure to provide compensation for not providing redress for causing lawful uses of the land to cease.
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6. A full award of costs should be made.

The response by the Council

7. The Council had initially come to the view that the appeal was not valid, on the basis that the appellant had not stated his interest in the land. However, the appeal was accepted by the Inspectorate, and the Council had proceeded.
8. There is no basis for the allegations that information was withheld, or that the relevant enforcement notices were not served. The Council have not behaved unreasonably in defending an appeal that had in effect been thrust upon it.
9. In view of the poor information submitted to support the application the Council would have been likely to refuse the grant of a certificate, and an appeal would then most likely to have been inevitable. No award of costs should be made.

Reasons

10. I have determined the application in the context of the government's Planning Practice Guidance (PPG). Paragraph 030 (reference ID: 16-030-20140306) of the guidance on appeals advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
11. Much of the appellant's argument concerns the Council's alleged maladministration of their enforcement register, and misconduct by Council officers. I wrote to the appellant prior to the Hearing and warned that allegations of the Council's maladministration or fraud were not matters for consideration in the context of a LDC appeal, that if they are to be pursued, it must be through other channels, and that I would not hear evidence on any matters of this nature. Furthermore, these are matters that do not go to the question of whether or not the reasons for refusal of a LDC were well-founded, which as I point out in my decision, rest on the facts of the case, and on relevant planning law and judicial authority.
12. Furthermore, much of the voluminous evidence put forward by the appellant concerns claims that several enforcement notices are nullities. Again, as pointed out in my note prior to the Hearing, and as had previously been advised by the Inspectorate¹, a s.192 application and s.195 appeal is not a route by which the validity of an enforcement notice can be questioned. This is on the basis of the provisions of s.285(1) of the Act.
13. There has been no substantial evidence adduced to show that enforcement notices were not served, or that information was withheld. Indeed, looking at the enforcement history of the site, the contrary is indicated. Regarding the appellant's reliance upon alleged defects in the Council's register of enforcement notices, this is a matter of the Council's administrative procedures, and does not go to the content of the notices recorded therein, or to validity of the notices themselves in terms of issue and service.

¹ E-mail of 25 February 2016.

14. As to the claim that the Council have unreasonably caused lawful uses of the land to cease, and have prevented the grant of planning permissions and of LDCs, again the enforcement history, and planning history indicate the contrary. It is the case that planning and LDC applications have been refused, but the evidence shows they have been properly considered both at application and appeal stages. It appears more likely that the site owners have continued with several unlawful uses of the site over a considerable number of years. Should any question of compensation arise, that would need to be dealt with through other means than a s.195 Hearing.
15. Evidence adduced by the appellant was very extensive, but of poor quality in terms of supporting a LDC application. I concur with the view that an appeal was inevitable. I do not consider the Council behaved unreasonably in defending their stance at appeal, or that the appellant incurred unnecessary or wasted expense as a result. I shall refuse the application.

Stephen Brown

INSPECTOR