The Planning Inspectorate

Costs Decision

Site visit made on 24 October 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 20 December 2016

Costs application in relation to Appeal Ref: APP/A1720/C/16/3156296 Unit C Lake Works, Cranleigh Road, Porchester, Fareham, Hampshire PO16 9DR

- 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 Fareham Borough Council for a full award of costs against Mr Paul Donald (Victory Travel Ltd)
- The appeal was against an enforcement notice alleging change of use of the site to a mixed use as a coach depot and vehicle repairs and graphic design and digital printing business.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 6 December 2016.

Decision

1. The application by Fareham Borough Council for a full award of costs is allowed in the terms set out below.

Summary of Submissions for Fareham Borough Council

2. The appellant's behaviour was unreasonable because he failed to respond to the Planning Contravention Notice (PCN) until five weeks after the appeal was lodged and this prejudiced the ability of the Council to prepare its case and resulted in wasted expense. This was because it had to do its own investigation to find information that should have been available directly from the appellant.

3. The respondent's evidence is internally contradictory, inconsistent and inaccurate.

Summary of submissions for Mr Paul Donald (Victory Travel Ltd)

4. The appellant failed to respond to the costs claim despite being invited to do so on two occasions.

Reasons

5. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, in either procedural or substantive ways,

and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process[1].

6. The Council provided a clear and comprehensive statement and there is no evidence that their case was unduly compromised by the late completion of the PCN. However in an enforcement appeal the onus is of proof lies with the appellant, and the PCN is an important document which sets out the facts as perceived by the appellant. I have no doubt that the late completion of this document would have resulted in unnecessary and abortive work because the Council had to search out evidence that should have been available in the PCN.

7. I also agree that the appellant's evidence was vague, inconsistent and contradictory. Whilst I found in the appellant's favour in the appeal this was solely because of the undisputed planning history of the site and not because of any other evidence provided. Consequently I do not consider that the onus of proof on matters of fact has been discharged.

8. Therefore by reason of the late completion of the PCN and the inconsistent and contradictory evidence I conclude that the Council has had to incur extra costs in the appeal process and this is as a result of unreasonable behaviour by the appellant. Bearing in mind the failure of the appellant to make any cogent response to the costs claim I am bound to make a full award of costs against the appellant.

Costs Order

9. 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 powers in that behalf, IT IS HEREBY ORDERED that Mr Paul Donald (Victory Travel Ltd) shall pay to Fareham Borough Council the full costs of the appeal proceedings described in the heading of this decision. Such costs also include the preparation of the costs claim.

10. The applicant is now invited to submit to Mr Paul Donald (Victory Travel Ltd), to whom a copy of this decision has been sent, details of those costs with a view to reaching 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 a detailed assessment by the Senior Courts Costs Office is enclosed.

Sukie Tamplin

INSPECTOR

[1] ID16-028-20140306: National Planning Practice Guidance (PPG)