



Cost Decision

Site visit made on 6 December 2016

by Sandra Prail, MBA, LLB (Hons), Solicitor (non practising)

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

Decision date: 13 January 2017

Costs application in relation to Appeal Ref: APP/V2255/C/16/3152534 Land and buildings between 2 and 4 Acorn Street, Sheerness, Kent, ME12 2ST.

- 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 Mirian Gashi for a partial award of costs against Swale Borough Council.
 - The appeal was against the enforcement notice alleging without planning permission the change of use of the land for the purposes of fitting, repair and or providing sales, selling of tyres, car servicing and associated storage, shipping containers and materials which in the opinion of the Council requires planning permission.
 - The requirement of the notice is to (i) cease the use of the land and (ii) remove the storage container and any other equipment from the land including signage identifying the activity.
 - The period for compliance with the notice is one month.
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Decision

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

Reasons

2. The *Planning Practice Guidance* (the Guidance) advises that irrespective of the outcome of the appeal, 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 process.
3. The Guidance indicates that a local planning authority is likely to be at risk of an award of costs where it withdraws an enforcement notice without good reason.
4. The Appellant asserts that the Council has acted unreasonably by withdrawing an enforcement notice after the submission of appeal statements by the Appellant. The assertion concerns an enforcement notice which he says involved an allegation of car washing activities and was withdrawn by letter dated 13 May 'due to drafting errors'. No response from the Council is before me nor do I have any documentation concerning that notice.
5. I have determined the appeal in relation to the enforcement notice issued on 22 April 2016. The earlier notice was not within my remit and therefore not within the remit of this decision. In any event there is insufficient information

- before me to enable me to draw any conclusions about whether an earlier notice was withdrawn without good reason.
6. The Guidance indicates that a local planning authority is likely to be at risk of an award of costs where it provides information that is shown to be manifestly incorrect or untrue.
 7. The Appellant asserts that in relation to the appeal before me car wash activities have needed to be addressed unnecessarily. He refers to the Council's website which he says incorrectly describes an earlier appeal which concerned car washing as 'in progress' and that this has caused confusion. No response from the Council is before me.
 8. It is correct that third parties have referred to car wash facilities in their representations. In my appeal decision I state that these are not relevant to the appeal. But even if the Council's website was not clear as to the appeals being determined the notice itself and the notification letters provide an accurate description of the development the subject of the appeal. The notification letter sent by the Council to neighbours does not refer to car wash facilities and accurately describes the development attacked by the notice. In any event the Appellant's submissions before me on the matter of the car wash are minimal and I cannot conclude on the evidence before me that the website entry caused the Appellant to incur any unnecessary or wasted costs.
 9. The Guidance indicates that a local planning authority may be at risk of an award of costs where prior investigations would have ensured the accuracy of an enforcement notice.
 10. The Appellant argues that the plan attached to the enforcement notice includes an incorrect boundary and that this is a drafting error. In my decision I concluded that the plan was sufficiently precise and did not require variation. I therefore do not find unreasonable behaviour in this regard.

Conclusion

11. For the reasons given I find that unreasonable behaviour resulting in unnecessary expense as described in the Guidance has not been demonstrated. I therefore conclude that the award of costs sought by Mr Mirian Gashi against Swale Borough Council is not justified in whole or part.

S. Prail

Inspector