
Costs Decision

Site visit made on 30 March 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 16 May 2017

**Costs application in relation to Appeal Ref: APP/X1545/C/16/3161041
Land at Tolleshunt Wood within Chantry Wood, Witham Road,
Wickham Bishops, Essex CM8 3NQ**

- 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 Guy Dehn for a full award of costs against Maldon District Council.
- The appeal was against an enforcement notice alleging the unauthorised operational development to erect a building.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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 process.
3. This claim for costs has been judged on its merits with all the evidence taken into account and with regard to the circumstances relating to the issue of the enforcement notice and to the appeal.
4. Mr Dehn lists a dozen instances where he believes the Council has behaved unreasonably. Some of the points made fall within the same general topic areas. The Council has mounted a robust defence on each of the points raised. Mr Dehn has made no comments upon the Council's defence.
5. The question of whether it is expedient to take enforcement action in the first instance is purely a matter for the local planning authority. It appeared a breach of planning control had factually occurred and that is consistent with my findings on ground (c). Adequate prior investigation had been made before action was taken, although it appears that this was not the case with an earlier enforcement notice which was withdrawn.
6. When considered as a whole, the Council's case in response to the ground (a) appeal was not without merit and involved matters of judgement. I do not consider the Council undertook the enforcement action or the engagement with the appeal lightly. There were sufficient grounds given to substantiate the reasons for issuing the notice (as clarified in the Council's

statement) and the opinion that the development should not be given planning permission, albeit I have found against them. If the Council had invited a planning application, I cannot see how it would have avoided an appeal.

7. The Council has supplied ample evidence of its attempts at co-operation with Mr Dehn. Insofar as I can tell the Council never formally authorised the works that were eventually carried out by Mr Dehn or by Mr Tony Turner on Mr Dehn's behalf. The Council tells me that its Enforcement Policy came into effect after the enforcement investigation was instigated.
8. The development in Old Pond Wood does not provide a strong case in favour or against the appeal development which has to be assessed on its own merits. Both the appellant's and the Council's cases remained the same after the disclosure of the enforcement notice relating to Old Pond Wood.
9. The assertions made in the Council's statement, for the most part, required an exercise of planning judgement to the facts of the case. They were not so vague, generalised or inaccurate as to amount to unreasonable behaviour. I am not convinced the Council were any longer confusing the appeal site with the adjoining Maeldun Wood. If the odd piece of equipment, such as a wheelbarrow, is stored outside, I consider it to be of very little consequence but the Council is entitled to raise the point. The withdrawn enforcement notice which wrongly attributed to Mr Dehn matters occurring in Maeldun Wood has been dealt with by a separate appeal and costs award.
10. Having read all the written material, I find that there is nothing of substance before me to suggest that the Council has behaved unreasonably in relation to the procedural matters at the appeal or in its handling of the matters leading up to the issue of the enforcement notice. The Council submitted sufficient evidence to substantiate its case and the reasons for issuing the notice.
11. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is unjustified in this case.

Andrew Dale

INSPECTOR