
Costs Decision

Inquiry held on 23 May 2017

Site visit made on 23 May 2017

by Mr K L Williams BA, MA, MRTPI

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

Decision date: 12 June 2017

Costs application in relation to Appeal Ref: APP/F2605/C/16/3154031 Land adjoining Chase Farm and Fredericks Loke, Church Lane, Southburgh, Norfolk, IP25 7SU

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Breckland Council for a partial award of costs against Mr John Cole.
- The inquiry was in connection with an appeal against an enforcement notice alleging a change of use of land from agricultural use to a mixed use of agriculture use and use for the stationing and residential use of a caravan.

Summary of Decision: The application succeeds in part and a partial award of costs is made.

Summary of Council's Submissions

1. The appellant provided little evidence to substantiate his claim of residing in the caravan for over 10 years. The Council has considered throughout that the appeal had little prospect of success. This was highlighted in the Council's letter to the appellant of 6 March 2017 which warned of a costs application. The letter highlighted severe inconsistencies and deficiencies in the appellant's case. They included evidence from site visits by Council officers, observations by local residents and the absence of Council Tax payments during the period relevant to immunity from enforcement. There was also the appellant's own reference in a letter of 19 June 2004 to being too old to start living in a caravan. Council records show an email in March 2006 from the appellant advising that the caravan was unoccupied. A 2016 letter from Cranworth Parish Council also cast significant doubt on residence in the caravan since 1998 as claimed. A copy of that letter was provided to the appellant.
2. There was also unreasonable behaviour with regard to the issue of 5 year housing land supply (HLS), which was only referred to by the appellant in his proof for the Inquiry. The Council's letter of 6 March 2017 made clear its view that there had been unreasonable behaviour by the appellant resulting in substantial unnecessary costs to the Council in defending the appeal.

Summary of Appellant's Submissions

3. The unreasonable behaviour was by Breckland Council in refusing to have a dialogue to discuss the development. The HLS issue was first brought up by the Council, not by the appellant. The appellant has no recollection of making any

Freedom of Information request in 2006. He would not have done that. He has been living in a caravan on the land as set out in his appeal.

Assessment

4. Irrespective of the outcome of an appeal, costs may only 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. The Planning Practice Guidance provides examples of behaviour which may give rise to an award of costs against an appellant. They are not exhaustive but include pursuing an appeal that had no reasonable prospect of success.
5. In its Statement of Case, submitted in September 2016, the Council acknowledged that it could not then demonstrate a 5 year supply of deliverable housing sites. The situation had changed prior to the Inquiry and in May 2017 the Council chose to put in a document intended to demonstrate that it now had a 5 year supply. In that context it was unsurprising that the appellant drew attention in his proof of evidence to the position as set out in the Council's earlier statement. Having received the Council's updated document the appellant acknowledged that housing land supply was not a central issue in the appeal. There was not unreasonable behaviour by the appellant in respect of this matter.
6. In its Statement of Case the Council had set out the relevant period in respect of an appeal on ground (d) with regard to immunity from enforcement. It also explained that on this ground of appeal the burden of proof rested with the appellant to make his case on the balance of probabilities. It went on to set out the range of evidence it intended to produce against the appellant with regard to immunity from enforcement. This included evidence from third parties, statements in previous planning applications, site visits by Council officers and absence of Council Tax record for the site. The Council's letter to Mr Cole of 6 March 2017 drew attention to the range of evidence against immunity from enforcement and to the severe deficiencies in the appellant's case. It also provided Mr Cole with a copy of a letter from Cranworth Parish Council addressing matters related to immunity. The Council's letter warned Mr Cole of the risk of an award of costs against him.
7. Mr Cole did address some elements of the evidence against him. They included an alternative address in Swaffham and an email in March 2006. Nevertheless, no substantive documentary or witness evidence was submitted by Mr Cole to support his residential use of the appeal site throughout the relevant 10 year period. On that basis, and having regard to the range of evidence against him, Mr Cole should have been aware that his appeal on ground (d) did not have a reasonable chance of success. Although he had previous experience of the planning system Mr Cole was not legally represented in this appeal. Nevertheless his continued pursuit of his appeal on ground (d) was unreasonable once he had received the Council's letter of 6 March 2017. Allowing a week to give time for receipt and consideration of that letter, I find that there was unreasonable behaviour from 13 March 2017. From that date the Mr Cole's unreasonable behaviour led the Council to incur unnecessary costs in preparing its case and defending that ground of appeal.

Conclusion

8. Having regard to the above and to all other matters raised the requirements for a partial award of costs are met.

Formal Decision and Costs Order

1. In exercise of my 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 enabling me in that behalf, I HEREBY ORDER that Mr John Cole shall pay to Breckland Council (The Council) the costs of the appeal proceedings in appeal APP/F2605/C/16/3154031, limited to those costs arising in relation to the appeal on ground (d) which arose on or after 13 March 2017. Such costs are to be assessed in the Supreme Court Costs Office if not agreed. The Public Inquiry was in connection with an appeal against an enforcement notice alleging an unauthorised change of use of land to a mixed use of agriculture and the stationing of a caravan for residential purposes.
2. The Council is now invited to submit to Mr John Cole, 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 Supreme Court Costs Office is enclosed.

K Williams

INSPECTOR