
Costs Decision

Site visit made on 16 May 2017

by D E Morden MRTPI

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

Decision date: 16 June 2017

Costs application in relation to Appeal Refs: APP/D1590/C/16/3158045 and APP/D1590/C/16/3158046

196e Hamlet Court Road, Westcliff-on-Sea, Essex, SS0 7DE

- 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 Southend-on-sea Borough Council for a full award of costs against Mr M Najib and Mrs M Raja.
- The appeal was against an enforcement notice alleging the change of use of the land from storage within Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to dwellinghouse (Class C3).

Summary of Decision: The application is allowed in the terms set out in the Formal Decision and Costs Order at paragraphs 8, 9 and 10 below.

The submissions by Southend-on-Sea Borough Council

1. The Council submitted that notwithstanding the financial and personal circumstances of the appellants they had had the opportunity to instruct a solicitor and that company whilst submitting an appeal on two grounds (amended to three) had not submitted a case or any evidence on any of them.
2. The solicitor's own admission was that the ground (a) case was absent, that on ground (d) provided no evidence of any 10 year period of residential use and on ground (f) absolutely nothing relevant to that ground was submitted. Whilst parties are generally expected to meet their costs, the Council should not have to go to the expense of preparing and arguing its case when nothing is put forward to substantiate the appeal made. The opportunity to withdraw the appeal was made clear in the Council's statement but still proceeded with and the Council is entitled to its full costs in this instance.

The response by the appellants

3. In response the appellants stated that there had not been unreasonable behaviour. A statutory right of appeal had been exercised and there was no option available other than appealing to resolve issues.

Reasoning

4. The Planning Practice Guidance 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.
5. Whilst there is a statutory right of appeal against the issue of an enforcement notice and a right to have the deemed planning application considered, it is

incumbent upon an appellant to support that appeal with reasoned arguments as to why the appeal should be allowed. Where, as in this case, there is a legal ground of appeal the onus is on an appellant to provide evidence that supports the claim made (in this case that the use had been carried on for a sufficient time to render the notice too late).

6. No evidence as to previous residential use was put forward, just an unsubstantiated claim as to that use. Similarly on the planning ground (ground (a)), there was no reasoned evidence to justify the grant of planning permission in this instance. Finally, on ground (f) no lesser requirements were suggested.

Conclusion

7. Taking all these factors into account I therefore conclude that unreasonable behaviour on the part of the appellants resulting in unnecessary or wasted expense for the Council, as described in the PPG, has been demonstrated and I will allow the claim for full costs.

Formal Decision and Costs Order

8. The application for an award of costs is allowed in the terms set out below.
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 enabling powers in that behalf, IT IS HEREBY ORDERED that Mr M Najib and Mrs M Raja shall pay to Southend-on-Sea Borough Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Mr M Najib and Mrs M Raja, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D E Morden

INSPECTOR