
Costs Decisions

Site visit made on 15 May 2017

by **D E Morden MRTPI**

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

Decision date: 19 July 2017

Costs application in relation to Appeal Ref: APP/X1545/C/16/3142293 Bakers Nursery, Bakers Lane, Tolleshunt Major, Maldon, CM9 8JR

- 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 Maldon District Council for a full award of costs against Mr J Patrick.
- The appeal was against an enforcement notice alleging the change of use of the land for the stationing of a caravan. *[sic]*

Decision: The application for an award of costs is allowed in the terms set out in the Costs Order at paragraph 21 below.

Costs application in relation to Appeal Ref: APP/X1545/C/16/3142293 Bakers Nursery, Bakers Lane, Tolleshunt Major, Maldon, CM9 8JR

- 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 J Patrick for a full award of costs against Maldon District Council.
- The appeal was against an enforcement notice alleging the change of use of the land for the stationing of a caravan. *[sic]*

Decision: The application is refused and no award of costs is made.

The submissions for Maldon District Council

1. The application was for a full award of costs. Paragraph 18 of the Planning Policy Guidance states that a ground of appeal that is cited unreasonably, even if later withdrawn, may be subject to a claim for costs where it has caused unnecessary expense for the local planning authority.
2. The appellant had been unreasonable in pursuing the appeal. No evidence of a functional need had been submitted and no business plan; the appellant had relied totally on previous planning permissions having been granted. He referred to the previous officers' report stating that a functional need existed but these comments were anecdotal and no evidence was submitted with the appeal despite the onus being on the appellant to prove his case.
3. On ground (b) the appellant disputed that there had been a change in the use of the land but it was clear that the previous temporary permission had expired and no permission now existed for the mobile home. The claim that it was ancillary to the agricultural use of the land was simply incorrect in law. It was wrong therefore to have pursued an appeal on ground (b). Similarly on ground

- (d) the appellant did not understand the law and the previous inspector in March 2015 had made it clear there could be no lawful use because of time.
4. On ground (f) the appellant had failed to suggest any lesser steps and how they would overcome the objections which he was required to do if appealing on that ground. Similarly the appellant had not given any reasons why the period for compliance should be doubled (from six months to twelve).
 5. In all these circumstances the appellant had been unreasonable in pursuing these various grounds of appeal. The Council had been put to unnecessary expense in answering these grounds of appeal and should therefore, be entitled to its full costs expended in answering the appeals made.

The response by Mr J Patrick and the Counterclaim

6. In response the appellant did not submit a reply in the normal sense but his own costs claim against the Council. Even allowing for the fact that the Notice issued was incorrect and had to be corrected, the appellant's claim was based on a lot of misconceptions as to the legal position regarding the lawfulness of the caravan, the issuing of enforcement notices and the status of the emerging development plan. Much of the submission (amounting to over 40 pages of small typeface closely spaced script) was also mainly a statement about the case rather than about matters relevant to any costs submission.
7. The main points submitted (in summary) were that the policies relied on were out of date and the enforcement notice was incorrect in so far as that the use had not changed for many years and it was lawful. It was claimed that no evidence had been put forward as to why the notice had been issued and the home could not be detrimental to the rural area as it had been there for 29 years.
8. The Council had failed to follow its own published guidelines regarding the issuing of enforcement notices and this had resulted in the appellant wasting time and expense over a long period in dealing with the appeal when the notice had no chance of success. The development plan it referred to was out of date and the emerging plan had been found unsound yet the Council still relied on the policies in those plans.

The response by Maldon District Council to the Counterclaim

9. The Council responded to what it had summarised as the points made by the appellant relevant to a response to its costs application and the appellant's own application. The saved policies of the RLP were up to date (this had been accepted at an appeal and referred to by the Council in para5.23 of its representations).
10. The emerging local plan had only been found unsound in regard to gypsy and traveller provision. It had completed its examination and the January 2017 examination was only in respect of matters that arose from the main modifications consultation in September 2016. The inspector's report was expected in summer 2017 and the plan will be adopted in 2017. The policies referred to in the representations were not out of date at all.
11. The Council did not need evidence to support the enforcement notice; the use was not lawful and the NPPF stated in para 207 that effective enforcement is important as a means of maintaining public confidence in the planning system.

The development was contrary to policy, harmful to the implementation of policies concerning sustainable development and was harmful to the rural character and appearance of the area. It was appropriate to take action.

12. Whether the caravan was lawful or not is a matter of law and on this the appellant was wrong. The appellant claimed the notice was incorrect and could not be corrected but gave no details of why that was the case. The Council did carry out proper investigations before issuing the notice; it does not have to issue a PCN if it is satisfied it has the information it needs. Just because the appellant disagrees with the Council's decision to take action it does not mean the Council has behaved unreasonably.
13. Claims that the Council tried to mislead the Inspector by not including all the history of the site and did not refer to other appeals that were relevant are incorrect as is the claim that the Council tried to delay the decision. All relevant history was included and the Council is entitled to argue how much weight if any should be attached to other appeal decisions. That is a question of balance that parties will disagree about, it is not unreasonable behaviour.

Reasoning

14. 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.
15. As is evident from my decision, the notice was incorrectly set out but it was easily correctable and involved an error not uncommon; it was clear the parties knew what the notice was concerned with despite the technical error. The appellant was acting on his own behalf and whilst the legal situation is a matter for the courts, I can say with some certainty that he has not understood the situation regarding what is lawful and how a development reaches that point.
16. Although disputes have been going on between the parties for some time the legal situation is not one that appears to have been debated before. The answer to the appellant's claims on grounds (c) and (d) are very easily dealt by a few sentences based on the straightforward history of the site and the clearly understood legal situation that is evident from the Council's representations. In my view dealing with those very simple matters should not have caused the Council any expense that could be quantified.
17. On the planning grounds it is a different matter. It is clear from the officers' report and decision in 2009 (when temporary permission was granted) what the appellant needed to provide in order to try to secure a permanent permission. The policies were and are explicit in what is needed to justify any grant of permission in this location but the appellant provided nothing in terms of accounts, financial details, functional needs or a business plan.
18. Without any of this information there was little possibility that a permanent permission could be granted for the development and there was little chance of success on the ground (a) appeal. My decision to grant a one year temporary permission, where the same appellant has already had one, will enable an unrepresented appellant the opportunity to provide that information. That would enable the Council to examine, in looking at an application, whether or not there was a justification for the development, whether it satisfied the relevant criteria in the policy and would, therefore, be acceptable.

19. The current appeal, in my view, had very little chance of success in the absence of the relevant information regarding viability and in those circumstances I consider that the appellant in pursuing the appeal caused the Council unnecessary and wasted expense in dealing with the arguments put forward and the considerable volume of papers that were submitted in support of the appellant's generally misconceived arguments.

Conclusions

20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated by the Council at least in so far as dealing with the planning merits are concerned and I will partially allow the application. Whilst the appellant made many assertions as to the Council's actions regarding this appeal, much of what he submitted was misconceived particularly regarding the law. The Council were faced with a breach of planning control that had a time limit on when it could be actioned and, in the circumstances, took appropriate action to try to resolve matters. I do not find that the Council acted unreasonably in this case and I will dismiss the appellant's claim for costs.

Costs Order in respect of the Council's application

21. 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 J Patrick shall pay to Maldon District Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the ground (a) appeal, such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Mr J Patrick, to whom 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