



Costs Decision

Hearing Held on 26 February 2019

Site visit made on 26 February 2019

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2019

Costs application in relation to Appeal Ref: APP/B3030/C/18/3196972 Land to the north-west side of Winthorpe Road, Newark, Nottinghamshire

- 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 Newark & Sherwood District Council for a partial award of costs against Ms C Smith.
 - The hearing was in connection with an appeal against an enforcement notice alleging the material change of use of land to residential occupation including the stationing of caravans and the erection of a structure.
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Decision

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

The submissions for Newark and Sherwood District Council

2. The application is made for a partial award of costs resulting from the submission of late evidence by the appellant and the need for additional work to read and address those matters which has resulted in premium consultancy rates being charged to the public purse.
3. Regulation 6 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations) states that:

A person who makes an appeal to the Secretary of State under section 174(3) of the Planning Act or section 39(2) of the Listed Buildings Act against an enforcement notice shall submit to the Secretary of State, a statement in writing—

(i) specifying the grounds on which he is appealing against the notice; and

(ii) setting out briefly the facts on which he proposes to rely in support of each of those grounds,

and if such a statement is not included with the appeal he shall deliver it to the Secretary of State not later than 14 days from the date on which the Secretary of State sends him a notice requiring him to do so.

4. The Council did not receive any accompanying statement within 14 days of the appeal and are not aware that anything other than the appeal form was submitted to the Secretary of State.
5. Council does not consider that the appeal form represents a statement in writing and remains frustrated at the lack of basic information from the

Appellants. The Council raises this point to highlight the total lack of information provided by the Appellants with the appeal submission contrary to regulations. At worst it is believed this could invalidate the appeal and certainly makes any decision made open to judicial review. At best it provides some relevant context to the conduct of the Appellants.

6. The lack of a submission by the Appellants has made it very difficult for the Council to secure consultation comments from internal and statutory consultees. For example, Highways England could not comment on access from the A46 (which they maintain) as no information on access has been provided.
7. A subsequent enforcement notice was issued to reflect the site location within the open break policy designation and importantly a policy/proposal not previously listed in the first enforcement notice. Again at no point has the Appellant provided any details of the proposed development e.g. existing block plan's layout or elevations, design and access statement, planning statement, information on gypsy status, highway access or other supporting evidence on trees, ecology, landscaping etc. The LPA only received one single site plan and the site specific FRA prior to the statement of case.
8. It seems unfair to the Council that the Appellants can provide such scant information to allow the due consideration of development proposal (under Grounds A) and complain at every turn when the Council provides information from the Environment Agency and Environmental Heath to the Appellant when it comes to light.
9. The Council have accepted the Inspector's decision to allow the Appellants further time to provide a detailed noise assessment as this is reasonable given their oversight on the matter. However, the Council's evidence included in our Statement of Case on this matter is not substantial. UK noise mapping data is freely available to the general public and any professional planning officer should have identified that the site is located in close proximity to the A1, A46 and adjacent dog kennels. Simple logical would follow that noise and environmental health impacts might be an issue for development on the site.
10. The Council strongly remain of the opinion that the enforcement notices refer to all relevant policies and proposals in accordance with regulations. The Council would also note on this matter that they have been more than willing to have an open dialogue with the Appellant's Agent and have offered to discuss the noise matter and further time with regard to the FRA update in October/November 2018. It is disappointing to see that the Appellants have now submitted further evidence on flood risk and three further appeals, none of which have been cited within the Appellant's Statement of Case or subsequent noise submission.
11. In addition, further information regarding the personal circumstances of an Appellant has been submitted on Friday 22 February 2019. All this information has been submitted outside of the Appeal timetable and a matter of days before the Hearing date. This appeal was lodged in February 2018 and as such the Appellant has had ample time to provide this information to enable the LPA to have the opportunity to consider this. As a result the LPA has had to instruct their planning consultant to do additional work to read and assess these late matters which has resulted in premium consultancy rates that have had been charged to the public purse.

The response by Ms C Smith

12. The Planning Practice Guidance (PPG) makes clear that an award of costs will only be awarded in relation to unnecessary or wasted expense. It is not clear where such expense been incurred.
13. An appeal form contains two options, one to set out the basis for the appeal in the box on the form or secondly to issue a further statement to follow. The appellant filled in the box in the appeal form and there was no ambiguity as to the basis of the appeal. An appeal has 3 stages; the form, the statement and final comments. The appellant complied with the requirements and submitted relevant statements in line with the appeal timetable.
14. If the issue of noise was an issue for the Council it should have been set out within the notice. There is no requirement to submit block plans, a design and access statement, or a planning statement in relation to an enforcement appeal. The appellant's case was set out in the Hearing Statement. In terms of submission of evidence relating to the Gypsy status of the residents, the Council should have informed itself of that information before deciding to take action. In any event, the status of the residents was not at issue in the appeal.
15. Similarly, the Council has referred to highway matters but that was not an issue in the appeal. In terms of the submission of evidence relating to flood risk, all the appellant has done is respond to comments from the Environment Agency that were appended to the Council's final comments. The appeal decisions referring to noise simply provide relevant examples.
16. There is no evidence that unnecessary expense has been incurred and the application is without merit.

Reasons

17. The PPG sets out the basis upon which an award of costs can be made. At a broad level costs may be awarded where a party has behaved unreasonably and that behaviour has led another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can relate to procedural or substantive matters.
18. In procedural terms, paragraph 052 of the PPG identifies that an appellant may be at risk of an award of costs if they delay in providing information or fail to adhere to appeal deadlines. The Council has referred to the requirements of the Regulations in terms of the information required to be submitted by an appellant with an enforcement appeal. They must identify the grounds of appeal and provide a statement setting out briefly the facts on which he proposes to rely in support of each of those grounds.
19. That initial statement can be made by filling in the appropriate part of the appeal form or by submitting a supplementary document. In this case, the agent for the appellant specified the grounds on which the ground (a) appeal would be made with regard to matters of flood risk, the unmet need for additional gypsy and traveller sites in the district and personal circumstances/human rights issues. It was a very brief statement but it did contain the basis of the factual case that the appellant intended to make which is all the regulations require.

20. The appellant requested that the appeal proceed via a Hearing and it is common practice for Hearing Statements to be submitted that expand on the initial case presented with the appeal form. That is what happened in this case and the appellant submitted the Hearing Statement and final comments in line with set deadlines. There was no requirement to provide a block plan, design and access statement or planning statement, as may be the case with a planning application being made to the Council.
21. The Council seeks to criticise the appellant for not providing information relating to highway matters or noise with the initial submission. However, highway safety was never raised by the Council as an issue and the matter of noise was only raised late in proceedings. The Council maintains that it should have been obvious to a planning professional to include detail on such matters as part of the appeal but the same argument could be directed at the Council. If those matters were an area of concern they should have been set out in the reasons for issuing the enforcement notice so that the appellant could be aware of the case the Council would make and respond accordingly.
22. As it was, the appellant's initial statement simply responded to the matters raised by the Council at the time and she cannot be criticised for not expanding into other areas.
23. When the Council did raise the issue of noise the appellant responded promptly and that avoided the need to delay the Hearing. Similarly, the new evidence submitted by the appellant in relation to flood risk shortly before the opening of the Hearing was in direct response to a letter from the Environment Agency which was appended to the final comments of the Council. It was new information that the appellant had not seen previously and it was perfectly reasonable for her to respond. In fact, the submissions of Mr Walton in response to the EA's letter helped to facilitate the discussion on the day and there was a degree of common ground over the technical matters which was helpful.
24. Other documents submitted in the lead up to the Hearing relating to personal circumstances could have been submitted sooner but the information was not substantial in terms of volume and there was no dispute over the facts. Consequently, the late submission did not lead to any wasted expense.
25. For all of those reasons the appellant did not behave unreasonably in relation to appeal proceedings. It follows that there are no grounds for an award of costs and I shall refuse the application.

Chris Preston

INSPECTOR