

Costs Decision

Site visit made on 25 June 2019

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 12 July 2019

Costs application in relation to Appeal Ref: APP/D0840/C/18/3211722 Land adjacent to King Arthurs Car & Coach Park, Fore Street, Tintagel, Cornwall PL34 0DD

- 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 T Dangar for a full award of costs against Cornwall Council.
 - The appeal was against an enforcement notice alleging the material change of use of the land to form an extension to the adjacent car and coach park.
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Decision

1. The application is refused.

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The Appellant's case is that the Council unreasonably failed to pay due regard to the expediency of serving the enforcement notice, and a number of points are made in support of this contention.
4. The Appellant details the process followed by the Council in serving a Planning Contravention Notice and subsequently an Enforcement Notice, but I find nothing unreasonable in that process as detailed.
5. The Appellant asserts that the Enforcement Report, on which the Enforcement Notice was based, took into account complaints from neighbouring residents about the impact on their living conditions without sufficient investigation, or sufficient regard to the use of adjoining land; the timing of the erection of fences; the planning history of the appeal site; or the findings of the EHO.
6. The Enforcement Report was submitted by the Council as Appendix 1 to its Appeal Statement. In my judgment it provides a comprehensive assessment of the alleged breach of planning control, the issues involved, the application of policies, the implication of other material considerations, and the reasons why it was considered expedient to pursue formal enforcement action. I find no deficiency in the level of regard given to any relevant matter. The effect on the living conditions of nearby residents is identified (correctly, in my view: I take the same approach in my appeal decision) as one of the two main issues in determining whether permission should be granted for the change of use.

7. In my appeal decision, I conclude that the potential for a significant adverse impact on the living conditions of nearby residents could be adequately addressed by the use of conditions. But it does not follow that the Council behaved unreasonably in reaching a different view at the Report stage, and maintaining that view at the appeal stage. The test is whether the Council provided sufficient evidence to substantiate its case, and in my judgment it did. The Enforcement Report and Appeal Statement clearly set out the reasons why the Council considered the impact on living conditions to be one of two reasons why planning permission for the breach of control should not be granted.
8. The Appellant points out that an allegation within the Enforcement Report about “previous unauthorised development” on his land has not been substantiated. While I appreciate that an unsubstantiated allegation has the potential to be misleading, it was not in this case a central or decisive factor in the Council’s conclusion that the development here at issue would have an adverse impact on the character and appearance of the AONB.
9. The Appellant contends that the enforcement notice refers to provisions of the AONB Management Plan, without drawing attention to reference therein to improving traffic management, and ensuring adequate car parking in visitor hotspots. There is no reference in the notice to the AONB Management Plan, so I assume this contention relates to the Enforcement Report.
10. The Enforcement Report does contain reference to provisions of the AONB Management Plan, but within the section of the report that assesses the effect of the development on the character and appearance of the area, so it is unsurprising that traffic management is not mentioned there. The effect on travel patterns is though considered, albeit briefly, in the section of the report that assesses the development in principle. The Appeal Statement subsequently explains the Council’s view that any public benefits of providing additional parking during the summer months do not outweigh the harm caused by the development to residential amenity and to the landscape.
11. The Appellant further contends that the Council failed to pay due regard to the pursuit of other options as an alternative to taking enforcement action. I can see no evidence to support that contention. The Enforcement Report notes that the land owners were made aware of the fact that planning permission was required for the development, but no application was submitted. The service of an enforcement notice does not in any event preclude an application for planning permission: such an application (that is, the deemed planning application under ground (a)) was subsequently made in the course of this appeal. Further, given the Council’s clearly stated view that a LDC application stood no reasonable prospect of success, it cannot be considered unreasonable for failing to suggest that the Appellant pursue such an application, and then withholding enforcement action until he did so.

Conclusion

12. I find that unreasonable behaviour on the part of the Council has not been demonstrated. I therefore determine that the application for an award of costs should fail.

Jessica Graham

INSPECTOR