



Costs Decision

Unaccompanied site visit made on 30 July 2019

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 16 August 2019

Costs application in relation to Appeal Ref: APP/R3325/C/18/3216687 Land at Sunnyhill Park Campsite, Riding Gate, Wincanton, Somerset BA9 8NG

- 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 William Hookins for a full award of costs against South Somerset District Council.
 - The appeal was against an enforcement notice alleging the change of use of the land from use as a campsite, for no more than 5 touring and 5 static caravans, to use for permanent residential occupation.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the 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. Where, as in this case, an appeal against an enforcement notice includes the grounds set out in section 174(2)(e) of the 1990 Act – that is, that the notice has not been properly served – it is customary for the determination of the appeal to address this ground first. That is because success on ground (e) means that the notice must be quashed irrespective of the merits of the appeal on any of the other grounds.
4. For the reasons set out in my decision on the appeal I found that prior to serving the notice the Council could and should have taken steps to ascertain the names and addresses of those occupying caravans on the appeal site as permanent residences, and that its alternative approach of displaying documents at and near the appeal site was not sufficient. I concluded that the appeal on ground (e) should succeed and the notice should be quashed.
5. In my judgment, the Council's failure to take reasonable steps to ensure that the notice was duly served amounts to unreasonable behaviour.
6. The PPG explains that an award of costs may be either procedural (that is, relating to the appeal process) or substantive (that is, relating to the issues arising from the merits of the appeal). In this case, the success of the appeal on ground (e) meant that it was unnecessary for me to consider the other grounds of appeal; I am not, therefore, in a position to judge whether the arguments of either party on these grounds had merit. The question then is

- whether, procedurally, the unreasonable behaviour that I have identified above directly caused the Applicant to incur unnecessary or wasted expense.
7. Since the reason for quashing the notice related directly to that unreasonable behaviour, this strongly suggests that the costs incurred by the applicant in appealing the notice were, as a consequence, unnecessary or wasted.
 8. The Council did not respond to the Planning Inspectorate's invitation to comment on the costs application, so I do not know its views on this matter. However, a point of potential relevance is the Council's ability, under the "second bite" provision (s.171B(4) of the 1990 Act) to issue another notice in respect of the alleged breach, this time ensuring due service on all relevant recipients. If that were to happen, there is perhaps an argument that since the Applicant could re-submit largely the same evidence as for the current appeal, his costs in assembling that evidence would not have been wasted.
 9. However, a costs application can only address the costs incurred in the course of the particular appeal to which it relates. This means that if the Council did not issue another notice in respect of the alleged breach (and given the lack of evidence before me on that point, I cannot be certain that it would), the Applicant would have no opportunity to recover the costs incurred in connection with the current appeal. That would in my view be unfair, given that the success of the appeal and the quashing of the notice were directly related to unreasonable behaviour on the Council's part.
 10. The PPG provides a list (which, importantly, is not exhaustive) of examples of unreasonable behaviour which may give rise to a procedural award of costs against a local planning authority. One of these is "failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined". That example is not of course on all fours with the current situation, but it is analogous, in that it is the unreasonable behaviour of the Council that has caused the quashing of the notice, without the issues falling under the other grounds of appeal having been determined.
 11. Taking all of this into account, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

12. 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 South Somerset District Council shall pay to Mr William Hookins 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.
13. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jessica Graham

INSPECTOR