



Costs Decisions

Inquiry Held on 9 July 2019

Site visit made on 9 July 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2019

Costs application in relation to Appeal A: APP/C3430/C/18/3199286 South Cannock Farm, Jacobs Hall Lane, Great Wyrley, South Staffordshire

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by South Staffordshire Council for a full award of costs against Mr Brian Jewkes.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the land for the open storage of building materials, caravan, vehicles, portable building, portable toilet and any other associated structures and materials.
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Costs application in relation to Appeal B: APP/C3430/C/18/3199290 South Cannock Farm, Jacobs Hall Lane, Great Wyrley, South Staffordshire

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by South Staffordshire Council for a full award of costs against Mr Brian Jewkes.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the unauthorised development of the land by the erection and siting of structures comprising of lorry bodies and associated structures.
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Decisions

1. The applications for an award of costs are refused.

The submission for South Staffordshire Council

2. The costs application was submitted in writing.

The response by Mr Brian Jewkes

3. The response was submitted in writing.

Reasons

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. The aim of the costs process is to encourage all those involved in the appeal process to behave in a reasonable way in terms of timeliness and in the presentation of full and detailed evidence to support their case.

5. The Council wrote to the appellant before the Inquiry setting out their concerns about how the appeals were being pursued. The Council's case for costs rests on their assertion that the appellant's evidence with respect to Appeal A accepts that the material change of use has occurred and that it has not become immune.
6. The evidence provided by the appellant with respect to Appeal A sought to show that the material change of use of the land for open storage had occurred for a period in excess of 10 years. By dismissing this appeal I conclude that the evidence presented is that the storage use the subject of the enforcement notice has occurred some time since 2010 which is short of the 10 year requirement.
7. With respect to Appeal B the Council contends that the appellant has submitted no evidence with respect to the unauthorised development, but instead the only issues that appear to be raised by the appellant relate to the portable building referred to in the first notice. In addition, the argument being made by the appellant is that the portable building is in fact physical development and is therefore subject to the 4 year immunity period rather than 10 years as set out in the enforcement notice.
8. The Council contends that the above matters were not originally raised when the appeals were submitted and had the appellant wished to make the argument with respect to immunity periods he should have appealed on ground (b), that the matters in the enforcement notice have not occurred. No such appeal was submitted.
9. I do not see that Mr Jewkes' evidence did not deal at all with the alleged breach in the second notice. However, he expressed his view that it is an '*associated structure*' covered in the second notice. Submissions were made at the Inquiry with respect to his arguments relating to that matter. In addition, the appellant does not dispute that the focus of his evidence was the portable building that is referred to in the first notice.
10. Regarding the unauthorised development alleged on the second notice, the appellant's evidence with respect to the date when the development in the area hatched blue on the enforcement notice plan is unreliable. Various dates have been given as to when the structures have been on the appeal site. The Council contends that on this basis it is unreasonable of the appellant to have run an appeal on ground (d). However, I find that the discrepancy of dates that has emerged through the appeal process is a product of the inquiry and illustrates the value of undertaking exercises of cross-examination examine evidence. It does not necessarily mean that the pursuit of an appeal on ground (d) was unreasonable.
11. Although I do not agree with the appellant's arguments and indeed, I have dismissed both appeals that does not mean to say that he did not make his case in relation to both appeals. In determining these appeals I have exercised my own planning judgment based on the evidence presented by all parties. The fact that both appeals fail does not mean that he has been unreasonable in pursuing them.
12. Although I understand the Council's frustration with respect to the appeals and the manner in which the cases and evidence were presented, I do not find that in this case the appellant has behaved unreasonably, but rather has failed to

provide sufficient evidence in both cases to prove that at the time the enforcement notices were issued it was too late to take enforcement action.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

A A Phillips

INSPECTOR