



Costs Decision

Site visit made on 8 October 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Costs application in relation to Appeal Ref: APP/X0360/C/18/3217438 Land to the north of the M4, Mill Lane, Earley, Wokingham RG41 5DD

- 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 Wokingham Borough Council for a full award of costs against Ms Aasia Khan.
 - The appeal was against an enforcement notice alleging: 1. Without planning permission the material change of use of the land to a use for the storage of a caravan and associated outside furniture, an articulated storage trailer and the storage of plant and machinery. 2. Without planning permission the importation of and storage of hard core and building materials on the land.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' chapter advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
3. The Council sought an award of its costs on substantive grounds. In summary, the Council argued that the appellant had pursued appeals on grounds (b) and (c) in the face of contrary evidence. There was no evidence of any agricultural activity at the appeal site. The appellant also misunderstood ground (d) and they did not provide any evidence to support this ground of appeal. Therefore, the Council incurred wasted expenditure in defending the appeal.
4. Summarised, the appellant's response was that agricultural activities had taken place at the site, they had tried to cooperate with the Council and that enforcement action should not have been taken.
5. At paragraph 053, the PPG stresses that the right of appeal should be exercised in a reasonable manner. An appellant will be at risk an award of costs being made against them on substantive grounds if their appeal had no reasonable prospect of succeeding. Paragraph 053 contains a non-exhaustive list of examples where such a situation may arise. This makes it clear that in an enforcement appeal, the onus of proof on matters of fact is on the appellant.

6. In terms of grounds (b) and (c), although the appellant's submissions were limited, they did set out a brief factual basis for pursuing those grounds and explained why in consequence the appeal should be allowed. Both grounds of appeal require assessment on a fact and degree basis and application of the balance of probability test. It was therefore necessary to assess all the submitted evidence to determine the weight to be given to it. Consequently, whilst the Council clearly disputed the appellant's version of events with their own evidence, it is not possible for me to be certain that the appeals on ground (b) and (c) did not stand a reasonable prospect of success.
7. It is likely that the appellant misunderstood ground (d), as their evidence in this regard largely refers to a track not attacked by the notice. However, the relevant part of the Council's statement contained two paragraphs, which largely reiterated comments made in relation to other grounds of appeal. Therefore, the amount of any unnecessary work carried out by the Council in defending this ground of appeal is unlikely to have been extensive. The Council did not supply any firm evidence to suggest otherwise.
8. For the above reasons, to my mind it is unlikely that the Council has incurred any significant wasted expenditure in defending the above grounds of appeal. In any event, in the absence of grounds (b), (c) and (d), the Council would still have had to defend the appeal as grounds (f) and (g) were also pleaded.
9. Moreover, other than at the initial stage the appellant was not professionally represented. The appellant also referred to having limited experience of the planning system. Further, I understand that English is not the appellant's first language. Given this context, the appellant cannot reasonably be expected to have a thorough understanding of the intricacies of planning law. This perhaps provides an insight into why the appeal was pursued in the manner it was.
10. Paragraph 031 of the PPG makes it clear that extenuating circumstances can be taken into account when considering whether unreasonable behaviour has occurred. I regard the above factors as amounting to extenuating circumstances in relation to any behaviour by the appellant which might otherwise have been construed as unreasonable in terms of the substance of the appeal. Even if I had concluded that grounds (b), (c) and (d) were pursued unreasonably, this would have weighed against awarding costs.
11. Accordingly, the conditions for an award of costs at PPG paragraph 030 have not been met.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR