



Costs Decision

Hearing Held on 25 February 2020

Site visit made on 25 February 2020

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2020

Costs application in relation to Appeal Ref: APP/Z1510/C/19/3223665 Gulls Meadow, Woodhouse Farm Road, Tumbler's Green, Braintree, Essex CM77 8FP

- 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 M Nicholls for a full award of costs against Braintree District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging without planning permission, the unauthorised change of use of land at Gulls Meadow for residential purposes, involving the siting of three mobile homes, one of which is occupied, together with storage containers and non-agricultural vehicles.
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Decision

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

The submissions for Mr M Nicholls

2. The claim is made on several grounds. Primarily, it is submitted that the Council failed to carry out adequate prior investigation before the notice was issued. There was a failure to properly consider the planning circumstances which applied to Mr Nicholls and his family and to provide any consideration of the rights of a family. The Council's actions were hasty and were not reviewed when the appeal was made. In addition, the Council failed to support the reasons for issuing the notice at appeal, failed to respond to the appellant's grounds and introduced a new reason for opposing the development based on a Protected Lane policy.
3. The Council also cast aspersions on the integrity of Mr Nicholl's professional agent.

The response by Braintree District Council

4. The Council refutes the application. After a complaint about the use of the site was received in January 2018, this led to a meeting on site on the 14 May 2018 between Council officers¹ and Mr Nicholls. During the visit it was explained that the current planning permission would expire on the 31 December 2018 and that should he wish to continue living at the site, Mr Nicholls should make a planning application. It would appear at this meeting that the appellant said his literacy skills were poor and that he wanted to set up an agricultural

¹ One of the officers was Mrs Robertson, a Planning Enforcement Officer

business. Thereafter, the Council sent a letter dated the 9 October 2018 to remind Mr Nicholls that he needed to make a planning application.

5. On the 23 October 2018 there was a telephone conversation between Mr Nicholls and Mrs Robertson in which he said that a planning agent named 'Peter' would be making the application but he could not remember his surname. Mrs Robertson asked if the agent could contact her directly. On the 16 January 2019 the Council sent another letter advising Mr Nicholls that the residential use was now unauthorised and that an enforcement notice had been drafted. An officer report was prepared on the 17 January 2019.
6. On the 21 January 2019 there was another telephone conversation between Mrs Robertson and Mr Nicholls in which it was stated no planning application had been received. He directed her to Peter Le Grys, who had been instructed to make an application and Mrs Robertson telephoned and left a message for the agent to contact her.
7. Mr Le Grys did this on the same day by email to say that the application would be made by the end of the week. However, this did not arrive in time, so the enforcement notice was issued on the 25 January 2019 and was signed for by Mr Nicholls the day after. The planning application was eventually submitted on the 29 January 2019 but without a fee and was turned away as the notice had been issued.
8. The Council are strongly of the view that taking enforcement action to secure compliance with planning legislation was entirely appropriate. The Council also responded to Mr Nicholl's circumstances in part 7 of their Statement of Case and referring to the Protected Lane policy was also in order, as it was part of their landscape character assessment. In all, their actions were carried out with due diligence and without prejudice to the human rights of Mr Nicholls.

Reasons

9. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense all wasted expense in the appeal process.
10. The Guidance stipulates that for enforcement action, local planning authorities must carry out adequate prior investigation. In this case the Council failed to establish during the course of the investigation that Mr Nicholls and his family were gypsies and travellers and this had consequences for their later actions.
11. Whilst the Council have proceeded on the basis that the onus is on Mr Nicholls to inform them of his status, this approach overlooks the Council's responsibilities under the Public Sector Equality Duty (PSED) and the 2010 Equality Act. Prior to taking any action, it is the Council who are required to have due regard to their 'equality duty' as part of the decision-making process. The duty requires the gathering of information to ensure that an informed decision as regards any negative impact of a decision is made.
12. This does not appear to have taken place. No contemporaneous notes of the May 2018 meeting were produced to evidence the Council's verbal claims at the Hearing that this duty had been discharged and inquiries were not made through a Planning Contravention Notice. The officer's delegated report appears to include a standard paragraph under the heading 'Equality

Consideration' but it is out of date as it refers to a 'forthcoming' PSED and, as such, it appears that the Council has only paid lip service to these very important duties. It is also not clear from the rest of the report how that duty has been exercised.

13. The Council correctly reference that effective enforcement action is important to maintain public confidence in the planning system; that it is discretionary and that the Council should act proportionately. However, after the May 2018 meeting there appears to be no more action by the Council in respect of their investigation other than a drive past the site prior to the issue of the notice.
14. Even if Mr Nicholls was not a gypsy and traveller, the Council also failed to have regard to the 'best interest of the children'. The Council was aware from their meeting that there were young children living on the site but, again, this appears to have been overlooked when framing and making the decision to issue the notice.
15. Notwithstanding these two most important responsibilities, I find the Council's approach made no allowance for Mr Nicholls' poor literacy skills. Letters were sent in the post rather than for example being hand delivered and read out to him as one option and the implications of the notice were also not explained to him. Indeed, the explanatory notes that accompanied the notice in the post mistakenly referred to listed building appeals.
16. I find the Council's serious failings in this matter amount to unreasonable behaviour, which meant Mr Nicholls incurred wasted expense dealing with this point in the preparation of his appeal and at the Hearing. This could have been avoided and the notice would not have had to be corrected if the investigation had been more thorough.
17. Turning now to the reasons for issuing the notice. These were largely a recital of the planning history of the site and focused on accommodation for agricultural workers. However, harm to the character and appearance of the area was mentioned and this was dealt with in the Council's Statement of Case and at the Hearing. The Protected Lane policy was also listed in the notice and as this is related to the protection of the character and appearance of the area, I find there is no case to answer in respect of Mr Nicholls' claims.
18. Finally, whilst the Council's statement that the agent's 'assertions... are entirely incorrect and misleading' has caused offence to Mr Le Grys, this is not a matter that falls to be considered within the parameters of an appeal costs application.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Guidance has been demonstrated and that a partial award of costs is justified.

Costs Order

20. 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 Braintree District Council shall pay to Mr Nicholls the partial 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.

21. The applicant is now invited to submit to Braintree District 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.

D Fleming

INSPECTOR