



Costs Decision

Inquiry Held on 8 December 2020

Site visit made on 9 December 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

Decision date: 15 January 2021

Costs application in relation to Appeal Ref: APP/X1165/X/19/3234809 Labrador Lodge, Rock House Lane, Maidencombe, Torquay TQ1 4SX

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Torquay Council for a partial award of costs against Mr Christian-Frederick Von Conzendorf Mattner
 - The inquiry was in connection with an appeal against the part refusal of the Council for a certificate of lawful use or development for use of the land for the siting of a mobile home for residential purposes and use of associated curtilage and access drive.
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Decision

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

The submissions for Torquay Council and the response by Christian-Frederick Von Conzendorf Mattner

2. The Submission for the Council and response by the appellant were made in writing prior to the inquiry and I do not repeat them here.

Reasons

3. 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.
4. Essentially the Council says that since it presented the *Staffordshire CC v Challinor* [2007] EWCA Civ 864 (*Challinor*) argument to the appellant that, even if any certificate were granted in the form sought by the appellant, the subsequent enforcement notices, which remain extant, effectively nullify the use sought by the appellant in the LDC. The Council is claiming full costs from the date of that notification, 3 September 2020.
5. The appellant argues that the enforcement notices are not relevant to the appeal and that even if they are relevant, *Challinor* is not relevant as the LDC, if granted in the form the appellant argues, would not have been in place when the enforcement notices were issued. Therefore, this could not have been used to counter the enforcement notices in any appeal. The appellant also notes the lateness of the Council's notification of the *Challinor* case and that the view it had expressed before this notification was different.

6. I accept that the enforcement notices are not relevant to the LDC appeal as these came into effect after the LDC application date. I also note that the Council came to the Challinor case relatively late and this changed its position. Nevertheless, the Challinor case sets out the current law in relation to this matter. So, while it is not relevant to the main decision, it is relevant to this costs application, as the effect of the enforcement notices and Challinor need to be considered in relation to the current situation.
7. Challinor notes 'I agree that the plain purpose of the statutory scheme, and of s.285 in particular, is to prevent any challenge to the enforcement notice on grounds which can be raised before the Inspector under s.174, in any place other than before him, with appeal from him to the High Court and beyond on a point of law. If the Certificate of Lawful Use did provide an answer to the Enforcement Notice, that was a ground of challenge which could and should have been the subject of an appeal under s.174, invoking grounds (c) and/or (d). That is enough to conclude this appeal. In short, section 285 prevails over s.191(6). The latter establishes conclusively the lawfulness of the certificated use at the time of the CLU, but the issue must be raised in the manner prescribed by the statute, namely before the Inspector'.
8. The case then goes on to look at possible scenarios that may occur. The appellant notes that he could not argue the lawfulness of the use in an appeal against the enforcement notices until he had the LDC which would be the subject of an appeal, which was not available. At the time the enforcement notice was served, the Council had not issued its LDC decision, so there was no LDC in place. However, that did not stop the appellant from appealing against the enforcement notices under ground (d) and similar information would have been relevant in such an appeal as has been provided at this appeal.
9. To that effect the appellant did attempt to make an appeal against the enforcement notices, so must have considered there was a case, but those appeals were too late and rejected by the Planning Inspectorate as being out of time. Therefore, the enforcement notices took effect. I therefore conclude that the appellant had the opportunity to appeal the enforcement notices, including under ground (d), effectively a similar process to an LDC. I accept there was no LDC in place at the time the enforcement notice was served, but even if one had existed as a result of this appeal, in the form required by the appellant, as the law stands it is right that the enforcement notices prevail as section 285 prevails over s.191(6) and nullifies any benefits of any previous LDC.
10. Overall, even if the use had been lawful at the time, the subsequent enforcement notices nullify any benefit, so time has been wasted since the Council notified the appellant of the Challinor case.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial 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 Christian-Frederick Von Conzendorf Mattner shall pay to Torbay Council the costs of the appeal proceedings described in the heading of this decision limited

to those costs incurred in relation to the inquiry from 3 September 2020; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The Council is now invited to submit to Christian-Frederick Von Conzendorf Mattner, to whose agents a copy of this decision has been sent, details of those costs, with a view to reaching agreement as to the amount.

Graham Dudley

Planning Inspector