
Costs Decision

Site visit made on 1 December 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 January 2021

Costs application in relation to Appeal Ref: APP/Y9507/C/20/3251190 Land east of Pony Farm, Findon, West Sussex BN14 0RS

- 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 Peter Leach for a full award of costs against South Downs National Park Authority (NPA).
 - The appeal was against an enforcement notice alleging the material change of use of the land from equestrian by the importation and storage of waste materials.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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.
3. The application is made on both procedural and substantive grounds. The procedural ground is that the LPA refused to respond to the appellant's reasonable requests for information, particularly to its letter of 6 April 2020. The substantive grounds are that the LPA failed to draft the enforcement notice with sufficient clarity and failed to identify the lawful use of the site and/or failed to give appropriate weight to the appellant's evidence.
4. In terms of the procedural issue, although the NPA initially did not send the appellant a copy of the officer's delegated report justifying the issue of the notice, it did so very shortly afterwards on 9 April, which allowed the appellant to take that into account in making its appeal submissions. Whilst this report was unsigned and undated it appears that this was simply an administrative error because the copy of the report submitted with the NPA's appeal statement is signed and dated 16 March, the day before the notice was issued. It is unclear whether the first paragraph of section 5 of the report is incomplete or is simply badly written, but in any case, the two versions of the report are the same in this respect. The later amended report does not appear to have been altered in any material respect.
5. The NPA considered that the items being stored on the site when the notice was issued constituted waste. It was entitled to decide that and its justification for doing so is set out in its report on the Certificate of Lawful Use application, which the appellant has submitted with the appeal.

6. It appears that the overgrown bunds on the site may both be made up of building rubble and earth. The notice requires the land levels to be returned to those prior to the importation of any building waste. On the face of it, such a requirement is perfectly clear because the rest of the site is flat, so once the building waste is removed all that is required to be done is to level the site to make it flat again by spreading out the earth within the bunds across the whole of the site (apart obviously from the areas of hardstanding).
7. It is clear that the notice applies both to the buildings and the rest of the land on the site because the former are located on the site, as detailed in the plan attached to the notice.
8. The NPA cannot rely alone on the grant of planning permission on appeal in 1996 for the erection of the stable building and conversion of the north western shed as a tack room to prove that equestrian use is the lawful use of the site. That is because horses may never have been stabled in it or kept on the land. The appellant has submitted evidence indicating that equestrian use has never taken place on the site, which has not been contradicted by the NPA.
9. However, there is no requirement on the NPA to identify the lawful use of the site. All that is required of the Notice is to identify the breach of planning control and the steps and time period(s) required to rectify it. The NPA has mentioned equestrian use in the allegation but it did not need to do so, and I note that there is no requirement in the notice to restore such a use.
10. For these reasons there is nothing unclear about its requirements and no need for the NPA to specify the lawful use of the site.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, an award of costs is not justified.

Nick Fagan

INSPECTOR