



Costs Decision

Site visit made on 25 January 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2021

Costs application in relation to Appeal Ref: APP/D0840/C/20/3257241 Land known as Garden Field, Boat Cove Lane, Perranuthnoe, Penzance, Cornwall TR20 9NW

- 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 Ms Kathleen Hawkins for a full award of costs against Cornwall Council.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of agricultural land to a mixed allotment and leisure use and for the stationing of a caravan in connection with that use.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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 PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice; to encourage local planning authorities to properly exercise their development management responsibilities; and to discourage unnecessary appeals.
4. I have upheld the enforcement notice based upon the evidence. There had therefore been justification for the Council to take action. The notice was issued following a previous attempt in which the Inspector had quashed a poorly drafted notice. I am not considering here whether that previous attempt to take enforcement action was unreasonable for which the appellant could have applied for costs at that time even though they were not professionally represented.
5. Some of the activity from the past at the appeal site may have stopped but if there is some doubt about whether or not the use in planning terms has ceased, it is not unreasonable for the Council to act with caution and issue a notice. As the appellant states in the costs application, they were not professionally represented prior to July 2020. It is conceivable that their assurances in correspondence, however well intended, may not have been

sufficient to truly prevent the continuity of use of the land other than just for the carrying out of agricultural activities. The Council only has to demonstrate, under the provisions of S172(1) of the Act¹, that it appears to them that there has been a breach of planning control (and that it is expedient to issue the notice). The Council does not have to be certain of it. It is then for the appellant to demonstrate their case through the appeal process.

6. In this case, I consider that the Council had good reason to issue a notice and, in that respect, acted reasonably overall. The Council would be criticised if a mixed use including leisure activities were to become lawful by default given the harm that they say had resulted from that use and which the appellant did not challenge via an appeal on ground (a).
7. There was too much focus in the drafting of the notice on the existence of the caravan. However, there is some justification for the requirement to remove the caravan because it is not entirely clear whether the caravan was brought onto the site only in connection agricultural activity. However, given my reasoning within the appeal decision, I consider that it was not necessary to remove it. The Council were not unreasonable in requiring its removal.
8. The appellant states that the leisure use as alleged, was not specified by reference to the classes within The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). However, the necessary contents for an enforcement notice are set down in S173 of the Act and associated regulations and not the UCO. There is not a requirement to specify a use class and as I have made clear in my appeal decision, in the instance of a mixed use, it would be wrong to attempt to de-couple elements of a mixed use. Again, the Council has not acted unreasonably and it is not "clearly and unreasonably in contradiction" of any clear legislative provision, as suggested by the appellant.
9. With respect to any camping use of the site, the notice does not affect that. It was not necessary for the Council to consider the implications of that use and they did not act unreasonably in that respect.

Conclusion

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

A Harwood

INSPECTOR

¹ The Town and Country Planning Act 1990 (as amended)