



Costs Decision

Hearing Held on 8 February 2021

Site visit made on 11 February 2021

by P N Jarratt BA DipTP MRTPI

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

Decision date: 2 March 2021

Costs application in relation to Appeal Ref: APP/W3330/C/20/3249313 Lawsons Burgess, Shurton Lane, Stogursey, Somerset, TA5 1QL

- 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 Terry Buller for a full award of costs against Somerset West and Taunton Council
 - The hearing was in connection with an appeal against an enforcement notice alleging the use of land for the siting of a mobile home together with porch and decking and its use as permanent residential accommodation.
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. It is the applicant's case that the manner in which the enforcement notice was served amounts to unreasonable behaviour by the Council. It was served whilst active pre-application discussions were in train which were cut short due to the notice and deprived the applicant of the opportunity to submit a revised application. At the hearing the Council acknowledged that there should have been better communication by the officer concerned which was partly due to remote working, but the notice was served correctly and after the agent was advised that a notice was being prepared. The serving of the notice does not stop discussions on a new application for the conversion of the main building to a live-work unit but delays in serving the notice could run down the clock in terms of the ability to serve a notice. Two applications for the retention of the mobile home have been refused and it is correct for the Council to serve a notice where there has been an identified breach of control.
4. Whilst the applicant has attempted to resolve the planning issues and submitted applications and an appeal that have been unsuccessful, it is nevertheless the case that there has been a clear breach of planning control. Although the applicant may have concluded that his agent's discussions with local authority officers have been misleading, these are matters more properly dealt with under the Council's own complaints procedure, rather than through

an application for a costs award. The serving of the notice was expedient and does not constitute unreasonable behaviour in the context of the Guidance. The applicant has not been deprived of the opportunity to submit a further application as this is a matter entirely under the applicant's control.

5. The applicant also considers that the Council failed to give due weight to the fallback position as a material planning consideration despite the Mansell¹ case being clearly referenced in the evidence. The applicant contends that the Council has not properly considered the weight to be given to the live/work potential of the site and that these matters may well have been drawn out fully during the pre-application process. The applicant also claims that the Council has failed to acknowledge that a live/work conversion of an existing building will conform with Policy EC6 and that it is only new build live/work units in the countryside which need to demonstrate an essential need for a rural location.
6. In respect of the fallback position, the Council consider it is unclear as under Class PA of the GPDO the whole building would need to be converted, as concluded by the Inspector in an earlier appeal decision, and the industrial element would be removed thereby removing the need for mobile home. The Mansell case has little or no relevance to the serving of the notice regarding a mobile home.
7. I am satisfied that the Council has not behaved unreasonably regarding the fallback argument presented by the applicant. The Council has not ignored the argument but reached conclusions different to those sought by the appellant, which they are perfectly entitled to do.
8. Whilst Policy EC6 is relevant in the context of the longer term intentions of the applicant for the conversion of a former agricultural building on the site, it is the stationing of a mobile home that is the allegation in the notice and this is what the Council has addressed and has considered planning policies relevant to that development. In any event, the Council has not disregarded the applicant's position in respect of Policy EC6 but reached their own conclusion on the facts before them.

Conclusions

9. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated in this instance. Accordingly, I refuse the application for an award of costs against the Council.

P N Jarratt

Inspector

¹ Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314