



Costs Decision

Site visit made on 14 January 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2021

Costs application in relation to Appeal Ref: APP/G5180/C/18/3217165 Land at Knockholt Farm, New Years Lane, Knockholt, Sevenoaks TN14 7PQ

- 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 Alan Howell for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against an enforcement notice alleging: Without planning permission, the material change of use of the land from use for agriculture to a mixed use for agriculture and for the stationing and use of a mobile home for residential purposes.
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Decision

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

Reasons

2. 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.
3. The appellant considers the Council has behaved unreasonably by ignoring legal documents and judgements. He has made reference to a completed planning contravention notice (PCN), the Wealden case¹ and an unspecified letter under oath. He states the Council were right to investigate possible residential use but not to ignore statutory declarations and legal documents and especially not to produce any hard evidence "just stating it looks like it can be lived in so let's enforce".
4. Under section 172, the Council is entitled to issue an enforcement notice where it **appears** to them that there has been a breach of planning control and that it is expedient to issue the notice. In such an appeal the onus is on the appellant to disprove the allegation rather than on the Council to prove it. In my appeal decision I have found the structure on the site is a welfare unit for agricultural purposes and not for residential purposes.
5. But the structure meets the statutory definition for a caravan and so by definition it is designed or adapted for human habitation. For this reason it is entirely reasonable for the Council to have considered there was a breach of planning control and issue a notice, based on its reasons for issuing the enforcement notice. This is particularly the case as the evidence indicates that

¹ *Wealden DC v SSE & Day* [1988] JPL 785

by the time the enforcement notice was served the appellant had not responded to 3 PCNs (and been found guilty of such a failure in court).

6. The appellant states he completed the PCN before the court case and before the first appeal decision². But no copy of the PCN response has been provided confirming its date or what it contained. So I am not satisfied the Council could have taken it into account before deciding to issue the enforcement notice. Moreover, whether the structure has been used for residential purposes or agricultural purposes is a fact-sensitive matter of judgment on which the Council and I are entitled to have reached different views, even taking into account the aforementioned Wealden case.
7. In addition, the appellant's costs application was made via correspondence dated 4 March 2020. From the information provided to me, the statutory declarations he has provided were only before the Council from December 2020. So they could not have been taken into account at the point when the costs application was made and as the Council make specific reference to them in its statement of 29 December 2020 it cannot be the case that the Council has ignored them.
8. Moreover, the appellant's statement of 24 June 2019 repeatedly refers to the structure as a "static caravan" with no further explanation of how it is used, as does the mobile home sales invoice which has been provided. The statutory declaration of Christopher Bushby refers to the structure on the site as a "static mobile home" and a "static home". Use of the above terminology without clarification of the use does not address the concern that the structure was used for residential purposes.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

L Perkins

INSPECTOR

² APP/G5180/C/18/3217165 dated 9 October 2019, quashed by order of the High Court 28 November 2019