



Costs Decision

Site visit made on 16 February 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th March 2021

Costs application in relation to Appeal Ref: APP/N4720/C/20/3262513 Land at Stonehaven, Selby Road, Halton, Leeds LS15 0PG

- 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 Alasdair McLean for a full award of costs against Leeds City Council.
 - The appeal was against an enforcement notice alleging material change of use to a mixed use of dwellinghouse and building business.
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Decision

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

Reasons

2. The Planning Practice Guidance (the 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 appellant argues that the Council failed to verify third party evidence, by visiting the site, and failed to have regard to relevant case law before issuing the notice. Furthermore, the Council confirm that the notice was served purely on the basis of third party evidence and that the storage container was included because it 'could' be used for building business purposes. The Council's failure to verify that the activities taking place amount to an unauthorised material change of use is unreasonable behaviour that has put the appellant to the unnecessary cost of the appeal.
4. In response, the Council argues that they had regard to their Enforcement Plan, which confirms that '*once the alleged breach has been investigated and it has been established that harm is being caused, action may be taken*'. The worldwide pandemic has made it difficult for site visits to be carried out. A Planning Contravention Notice was served and while that was responded to, the appellant failed to respond to a further letter dated 30 July 2020. The Council confirm their case relies upon third party evidence.
5. The PPG sets out a number of circumstances that would represent unreasonable behaviour, however that list is not exhaustive.
6. The extent of the Council's investigation includes the issuing of a Planning Contravention Notice and a letter, dated 30 July 2020, requesting the applicant's response to the claim that a building business was being operated from his property. In his response to the PCN, the applicant had confirmed that

- a building business was not being run from his home and he did not respond to the letter.
7. While the amount of evidence, relied upon by the Council, is substantial and from more than one source, I have found that it falls short of demonstrating, on the balance of probability, that the matters alleged have occurred. Had the Council undertaken their own site visit(s) then they may have been able to corroborate that the matters alleged were occurring on the Land and not just on the shared private drive.
 8. Alternatively, the Council may have found that there was insufficient evidence to demonstrate that the matters alleged were occurring as a matter of fact. The notice may not have been served and the applicant may have been saved the cost of the appeal.
 9. While the applicant claims the Council could have visited the site before the pandemic occurred, the evidence the Council has relied upon only covers the period following the national lockdown being brought into effect. The Council could not therefore have pre-empted the complaints that led to them serving the notice.
 10. It is likely that Council officers were working within a strict regime relating to the carrying out site visits during the pandemic, which could have prevented any physical investigation into activities taking place on the Land. However, it does not appear that the Council engaged with the applicant to secure a response to their correspondence of the 30 July 2020. There is also nothing to suggest that the Council carried out any other investigative work from that date to 7 October 2020, when the notice was issued.
 11. I therefore find that unreasonable behaviour by the Council, resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated and that an 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 Leeds City Council shall pay to Mr Alasdair McLean, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The Applicant is now invited to submit to Leeds City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Madge

INSPECTOR