



Costs Decision

Hearing Held on 11 January and 24 February 2021

Site visit made on 23 February 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2021

Costs application in relation to Appeal Ref: APP/D0840/C/19/3225133 Land at West Rose Works, St Mewan, St Austell, Cornwall PL26 7DR

- 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 Alice Knott for a partial award of costs against Cornwall Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging: Without planning permission, the material change of use with associated operational development of the land to residential use including the construction of a two storey dwelling approximate position outlined in green labelled A, a cabin approximate position outlined in green labelled C and the stationing of a two mobile homes approximate positions outlined in green labelled B and D together with various associated structures approximate positions outlined in blue and labelled O1, O2, S1, S2 and S3 on the attached plan and residential paraphernalia such as septic tanks, gas bottles, fences, decking, walls and outdoor seating etc.
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Decision

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

The submissions for Alice Knott

2. The appellant has been put to unnecessary expense in relation to the ground (a) appeal to cover 4 times the application fee due to the enforcement notice covering the whole site. The Council were requested to split the notice into individual notices but they chose not to.

The response by Cornwall Council

3. Refer to the guidance set out within the Planning Practice Guidance (PPG) relating to in what circumstances costs may be awarded and what unreasonable means.
4. The Council served Planning Contravention Notices (PCN) and checked the Land Registry records at 3 stages of the investigation. The site has been retained in single ownership. Furthermore, regulation 4(c)¹ requires precise boundaries of the land to which the notice relates to be specified in an enforcement notice. If separate notices had been issued but if it turned out that the precise boundaries were wrong, the Council would have been criticised for having to start again and issue further notices. Issuing 1 notice was the only option.

¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

5. With respect to the fee for the ground (a) appeal and deemed planning application, each of the occupiers of the site could have shared the cost.

Reasons

6. The 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. 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. I have upheld the enforcement notice based upon the evidence. There had therefore been reasonable justification for the Council to take action.
7. It was clarified at the appeal hearing that the site remains within a single Land Registry title and one of the other appellants, Miss Rowe, who occupies the site in a caravan ('B' on the notice plan) explained that there had been difficulties in formalising boundaries of ownership. The Council did understand the registered land ownership correctly and there is no dispute about that. However, the responses to the PCNs in particular that of Miss Rowe, indicated that the 4 people who purchased the land under a collective agreement had also split the land between them, whilst sharing the vehicular access.
8. It was agreed at the hearing between the main parties that there are 3 planning units on the site and I explain that within the appeal decision. The Council's appeal statement shows the boundaries of each part of the site were well defined prior to the notice being issued. Each unit is occupied by separate families.
9. The wording of the notice was originally ambiguous and required substantial correction. That was not assisted by the notice area covering the whole site which is the basis of this costs application. The separation of ownership was not clear to the Council however and nor was it clear to the owners themselves who had not agreed sufficiently to go through the formal Land Registry process. Boundaries of occupation could have been subject to change, particularly as the residential accommodation is partly provided within caravans which by definition are simple to move around. In itself, the siting of caravans can necessitate the identification of a broader area on an enforcement notice rather than simply that occupied by that caravan at one moment in time. Otherwise, it would be very easy for an occupant to move the caravan to another part of what I can also understand, appeared to the Council to be 1 large site in joint ownership. That could result in aborted work for the Council by having to withdraw the notice and start again.
10. Notwithstanding the physical boundaries on the ground, it can also be relatively easy with the right equipment and resources to move fencing. Had the Council gone the other way and attempted to define smaller, separate units on the site which were subsequently changed, whether for well-intentioned practical reasons or deliberately mischievous reasons, it could have resulted in a further protraction of the enforcement process.

11. I do share some of the concerns of the appellant regarding the implications for the payment of the fee for the deemed planning application. It is not an ideal situation although each of the occupiers could have factored into their analysis of development costs that at some point, they would need to confront the matter of trying to achieve planning permission and paying the necessary fees. I also recognise that the appellant's agent in representing their best interests approached the Council to try and reduce the liability for appealing the deemed planning application. However, the Council have to act in the overall public interest. Following what has been submitted and my questioning of the Council's officers about the form of the notice, I am confident that they were trying to find the most effective way of bringing matters under control. The PPG stresses the need for effective enforcement, that is important to tackle breaches that would otherwise cause unacceptable impacts as well as maintaining the integrity and ensuring public acceptance of the decision-making process. The Council did not act unreasonably in my view.

Conclusion

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

A Harwood

Inspector