



Costs Decision

Hearing Held on 9 March 2021

Site visit made on 19 January 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2021

Costs application in relation to Appeal Ref: APP/D2510/C/20/3259016 The land and associated dwelling at The Stables, Halton Fen, Halton Holegate, SPILSBY PE23 5BE

- 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 Jeff Stainton for a full award of costs against East Lindsey District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of land to a mixed use of residential and for the sale, display and storage of touring caravans and the siting of a static caravan.
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Decision

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

The submissions for Mr Jeff Stainton

2. The costs application was made orally at the hearing. The following points were made.
3. The Government's Planning Practice Guidance (PPG) advises that, for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.
4. In this case the Council failed to investigate the case properly and did not accurately identify the mixed use of the site. Furthermore, a letter from a Council officer indicated that the static caravan was 'permitted development'. It has also objected to the use of the site on the basis of traffic safety, based only on informal comments from the Highway Authority and without giving the appellant the opportunity to comment or provide information. Without this flawed notice the appellant would have been able to resolve matters by pursuing a planning application relating to the caravans only.
5. The Council's unreasonable actions have put the appellant to undue work and has caused injustice.

The response by East Lindsey District Council

6. The Council carried out a thorough investigation. The site was visited on a number of occasions, photographic evidence obtained and the site history studied. The Council took the view that some things were not needed in the notice because they were not the breach that was being targeted. However, no injustice was caused by omitting other uses.
7. The information obtained during the site visit was provided to the Highway Authority and the Highway Authority's response was based on this. The information was accurate.
8. The Council acknowledges that the letter regarding the mobile home was wrong. However, a letter is not a grant of planning permission and the Council reserves the right to re-investigate and take enforcement action if necessary.

Reasons

9. 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.
10. In this case the notice targeted the whole of the site and the allegation was of a change of use to a mixed use. As set out in the decision on the planning appeal, it was necessary for the allegation to set out the whole of the mixed use being carried out. Only by comparing the previous use/mixed use with the new mixed use could the nature of any material change of use be determined. It is clear that other uses not identified in the notice existed on the site when the notice was issued. Consequently, the allegation stated in the enforcement notice was wrong.
11. However, it does not appear to me that the flawed allegation was as a result of inadequate prior investigation. The matters omitted from the notice were things the Council were aware of, which is clear from the planning history. It appears that they were omitted in an attempt to focus the notice on the particular matters that were of concern – the caravan sales and the static caravan. While that was not the right approach, it was not indicative of unreasonable behaviour or a failure to investigate the matter properly in my view, just an error relating to a site in a slightly unusual and complex mix of uses.
12. The notice referred to the siting of a static caravan, but stated nothing about its use. Consequently, the breach of planning control in respect of the static caravan was not clearly stated. However, there does not appear to have been any uncertainty or disagreement regarding the use of the static caravan and it does not appear to me that the appeal could have been avoided (or grounds of appeal reduced) if its use had been stated. The matter was clarified at the hearing and I have no reason to suppose that the Council's error has added to the appellant's expense in pursuing the appeal.
13. The Council wrote to the appellant on 2 December 2019 stating that the static caravan was 'permitted development'. That was plainly wrong, as the Council accepts. However, I cannot see that this amounts to unreasonable behaviour in relation to the enforcement notice and this appeal. Indeed, it was plain from the fact that the Council issued the notice that it no longer regarded the static caravan as 'permitted development'. In any event, I have no reason to think

that the Council's letter added to the appellant's costs in relation to the appeal in any way.

14. The evidence provided by the Council regarding harm to highway safety is brief and does not include any written comment from the Highway Authority. However, it raises a number of relevant points including the narrowness of the road, the difficulties that might be experienced by vehicles towing caravans and the interaction of the site access with a public footpath. In my view there was a respectable basis for the Council's highway concerns and it did not act unreasonably in raising the issue in the notice and pursuing it at appeal.
15. I have considered the suggestion that the appellant could have resolved matters with a planning application relating to the caravans if the notice had not been issued. However, I have no evidence to suggest that the Council would have granted permission for the caravan uses, having regard to the case it has made out at this appeal.
16. For these reasons I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, the application for an award of costs fails.

Peter Willows

INSPECTOR