



Costs Decision

Hearing Held on 23 March 2021

Site visit made on 24 March 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2021

Costs application in relation to Appeals Refs: APP/Q0505/C/20/3257639, 3257640 and in relation to Appeals Refs: APP/Q0505/C/20/3257642, 3257643

Land at The Moorings, Thrifts Walk and Land at 9 & 9a Thrifts Walk, Cambridge CB4 1NR

- 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 the Reverend Helen Orr and Dr James Orr for an award of costs against Cambridge City Council.
 - The admissibility of the application was accepted by the Secretary of State by a decision dated 28 April 2021.
 - The hearing was in connection with:
 - (i) Appeals against an enforcement notice in relation to Land at The Moorings.
The notice alleges without planning permission the material change of use of the Land to a mixture of C3 residential dwelling and short-term visitor accommodation (Sui Generis).
 - (ii) Appeals against an enforcement notice in relation to Land at 9 and 9a Thrifts Walk.
The notice alleges without planning permission the material change of use of the Land to a mixture of C3 residential dwelling and short-term visitor accommodation (Sui Generis).
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DECISION

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

SUBMISSIONS AND REASONS

The submissions for the Reverend Helen Orr and Dr James Orr

2. The costs application and final comments were submitted in writing. The appellants' concerns included the Council's description of the shepherd's hut as an outbuilding, the inclusion of flat 9a within the Land, and the Council's failure to take account of tenancy arrangements at 9 & 9a Thrifts Walk and to clarify the highway status of Thrifts Walk. The appellants considered that a lack of accuracy and clarity in the enforcement notices, the Council's failure to withdraw the notice for 9 & 9a Thrifts Walk and the Council's lack of diligence in its investigations amounted to unreasonable behaviour, which caused unnecessary expense to be incurred.

The response by Cambridge City Council

3. The response was made in writing where the Council refuted all claims of unreasonable behaviour.

Reasons

4. 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.

The Moorings

5. In the enforcement notice the alleged breach of planning control is described as a material change of use of the Land to a mixture of C3 residential dwelling and short-term visitor accommodation (Sui Generis). The two structures allegedly used for the visitor accommodation, shown on the plan attached to the notice, are identifiable as Cam Cottage and the shepherd's hut. The allegation does not include any reference to the erection of a building or outbuilding or to the stationing of a caravan or mobile structure. The requirements are directed at ensuring the cessation of the use of the two outbuildings as short-term visitor accommodation and do not require the removal of the outbuildings from the Land.
6. The fact that the shepherd's hut is on wheels made no difference to the evidence on the use of the structure for short-term visitor accommodation or the description of the allegation. Furthermore, just because a structure is on wheels does not necessarily mean that it falls within the definition of a caravan or that it is not a building for planning purposes. Case law has established that three primary factors of size, permanence and physical attachment are relevant in determining whether or not a structure is a building. The assessment is one of fact and degree. The appellants provided no detailed evidence addressing these matters and failed to explain the relevance of the shepherd's hut being on wheels to the grounds of appeal. The notice is sufficiently accurate and it is clear that the shepherd's hut is one of the two 'outbuildings' identified and referred to in the enforcement notice.
7. The word 'outbuilding' to describe the shepherd's hut and its use was not unreasonable behaviour in the context of the alleged breach of planning control and the content and scope of the enforcement notice.

9 & 9a Thrifts Walk

8. In summary, the appellants submitted that the flats at 9 & 9a should not have been the subject of an enforcement notice because the flats were occupied under long leases and number 9a never had been used for short-term visitor accommodation. However, in my decision on the appeals I have determined to correct and to uphold the enforcement notice. This outcome alone demonstrates that the Council did not act unreasonably in issuing an enforcement notice and accordingly an award of full costs is not justified.
9. The alleged breach of planning control is described as a material change of use of the Land to a mixed use of C3 residential dwelling and short-term visitor accommodation (Sui Generis). The Land to which the notice relates is 9 and 9a Thrifts Walk. The lease arrangements would not necessarily preclude the use of the flats for short-term visitor accommodation and I have explained in my

decision that a use need not be taking place on the date when the enforcement notice is issued. The Council has confirmed that the appellants did not inform the Council of the completion of an Assured Shorthold Tenancy for flat 9 in April 2020, before the notice was issued in July 2020. Furthermore, the lease agreement was for an initial term of 4 months.

10. In determining an appeal section 176 of the 1990 Act provides the power to correct any defect, error or misdescription in the enforcement notice subject to no injustice being caused to the appellant or local planning authority. In discussion at the hearing the appellants accepted that to correct the notice to exclude flat 9a would not cause them injustice and I have exercised the power to do so. There was no need for the Council to withdraw the notice.
11. I conclude that the Council did not act unreasonably in relation to the issuing of an enforcement notice relating to 9 and 9a Thrifts Walk and its conduct through the appeal process.

Thrifts Walk

12. The legal status of Thrifts Walk was a matter that featured in the representations of interested parties but it was not a factor of any significance in the Council's case. There was no dispute that Thrifts Walk is open to the public to use as pedestrians and as drivers of vehicles. There was also agreement over the extent of the land ownership of the appellants in relation to the frontage of the property and the detached garage and parking area at the western end of Thrifts Walk. I was satisfied that it was not necessary to explore the matter in any great detail for the purposes of concluding on the legal and non legal grounds of appeal. There was no unreasonable behaviour by the Council on the matter.

Investigations

13. Before issuing the enforcement notices in July 2020 the evidence shows that the Council carried out adequate investigations and followed good practice, including the serving of Planning Contravention Notices in May 2019, February 2020 and March 2020.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Diane Lewis

Inspector