



Costs Decision

Hearing Held on 29 April 2021

Site visit made on 5 May 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Costs application in relation to Appeal Ref: APP/X0360/C/20/3252493 Barkham Manor Farm, Barkham Road, Barkham RG41 4DQ

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wokingham Borough Council for a full award of costs against Mr Roy Maslin.
 - The hearing was in connection with an appeal against an enforcement notice alleging failure to comply with condition No 8 of a planning permission Ref F/2011/2071.
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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 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 application is made by the Council in stating that the appellant's arguments in support of his grounds of appeal under sections 174(2) (b), (c) and (f) of the Act lack any substantive merit. The Council says that as a result it has wasted expense in contesting those grounds of appeal, which are the whole or nearly the whole costs of the appeal given that there would have been no need for a hearing had ground (g) alone been pursued.
4. The essence of the appellant's case under grounds (b), (c) and (f) is that the condition should be interpreted so as to have no effect, since it refers to a mobile home rather than what is now agreed by the main parties to be a residential building. Further, that the notice cannot require the removal of other items which are not part of any mobile home to be removed under the condition (a timber balcony/platform, hardstanding, utility connections).
5. However, despite citing case law such as *Trump*¹, the appellant did not in any appropriately substantive way address what the reasonable reader applying common sense would understand the words of the condition to mean in the context of the *overall purpose* of the planning permission.
6. This was a serious and notable omission, particularly as I found in dismissing the appeal that a reasonable reader would interpret the condition as requiring the removal of the built dwelling when taking into account the permission's overall purpose: namely, to permit a permanent agricultural workers dwelling

¹ Trump International Golf Club Scotland Ltd v the Scottish Ministers [2015] UKSC 74

but with the removal of the existing temporary agricultural workers dwelling (of whatever construction) to minimise the impact on the countryside from 2 dwellings on the land. The removal of items which I found to be part and parcel of the temporary dwelling also followed on from a consideration of the permission's purpose.

7. The failure of the appellant to properly substantiate his case in this obvious regard, with what appears to be no or at least wholly insufficient consideration of this part of the relevant case law, was unreasonable behaviour.
8. There is also an argument raised by the appellant on ground (c) that there is no such condition against which to enforce, since the permanent dwelling had acquired unconditional planning permission by virtue of Section 173(11) of the Act when the Council had 'under-enforced' in serving an enforcement notice in respect to the site in 2015. This was an argument without any substantive merit, since the 2015 notice could not have made any requirement in respect of the permanent dwelling which was being constructed lawfully under the conditional planning permission granted in 2013. For this reason, this part of the appeal was bound to fail and it constituted unreasonable behaviour by the appellant.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified covering all of the Council's appeal expenses save for those associated with responding to the ground (g) appeal. This award includes all expenses incurred in respect of the hearing, as it is extremely unlikely that a hearing would have been necessary in respect of the ground (g) appeal alone.

Costs Order

10. 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 Mr Roy Maslin shall pay to Wokingham Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs described in paragraph 9 of this Costs Decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Mr Roy Maslin to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR