



Costs Decisions

Inquiry Held on 11, 12 and 13 May 2021

Site visit made on 1 June 2021

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

an Inspector appointed by the Secretary of State

Decision date: 09 July 2021

Costs application in relation to Appeal Ref: APP/V1505/C/19/3234447 Land at Skirmish Wood, Outwood Farm Road, Billericay, ESSEX CM11 2TX

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr James Sidroy for a partial award of costs against Basildon District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the Land to use for the storage of metal containers.
-

Costs application in relation to Appeal Ref: APP/V1505/C/19/3234448 Land at Skirmish Wood, Outwood Farm Road, Billericay, ESSEX CM11 2TX

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Jacqueline Sidroy for a partial award of costs against Basildon District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the Land to use for the storage of metal containers.
-

Costs application in relation to Appeal Ref: APP/V1505/C/19/3234450 Land at Skirmish Wood, Outwood Farm Road, Billericay, ESSEX CM11 2TX

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr James Sidroy for a partial award of costs against Basildon District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging planning permission, the material change of use of the Land to use for the stationing of caravans for residential use.
-

Costs application in relation to Appeal Ref: APP/V1505/C/19/3234451 Land at Skirmish Wood, Outwood Farm Road, Billericay, ESSEX CM11 2TX

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs Jacqueline Sidroy for a partial award of costs against Basildon District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging planning permission, the material change of use of the Land to use for the stationing of caravans for residential use.
-

Decisions

1. The applications for award of costs are refused in respect to all appeals (APP/V1505/C/19/3234447, APP/V1505/C/19/3234448, APP/V1505/C/19/3234450, APP/V1505/C/19/3234451)

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 applicants say that the Council's behaviour was unreasonable because it contested (and maintained its resistance) to appeals made under ground (d) of Section 174(2) of the Act despite a "mountain of evidence" on the side of the appellants. Further that the Council had a "fatal misunderstanding" as to what constituted the planning unit and whether or not a use had been established in 2007 by its own records. The applicants say that this unreasonable behaviour caused unnecessary costs to be incurred through unnecessary time spent producing proofs of evidence and witness attendance at the inquiry, which consequently also took longer.
4. In respect of the use of the caravans¹, it is clear from my Decisions upon the appeals that I do not agree that it was unreasonable for the Council to contest the ground (d) matters. I did not find the appellants' "mountain of evidence" persuasive on the balance of probability and I upheld the enforcement notice. I do not agree with the applicants that Mr Sidroy and his two children gave clear and convincing evidence that 3 caravans were in use on the site in 2008 and it does not affect my view of their evidence that the Council's officer during cross-examination replied to a question by saying "they are probably not lying".
5. The appeals concerning the use of the metal containers² were allowed, but on a ground other than (d) which in the circumstances did not need to be considered. My quashing of the notice does not however mean that it was unreasonable for the Council to have contested the appeals made upon it, on ground (d) or otherwise. It seems that the Council acted following a site visit in September 2018 when only one of 6 containers on the eastern section was accessible, and it had reasonable doubts that their use was functionally linked with, and ancillary to, the lawful primary use of the site for paintballing and wargames. The burden of proof was on the appellants to show otherwise, which they successfully did on appeal.
6. The fact that there had historically been containers on the site (as evidenced in Council records and correspondence) does not mean that there had been a "fatal misunderstanding". The point at which the extent and use of containers within the planning unit comprises the introduction of a new primary use leading to a material change of use requiring planning permission is a matter of fact and degree. That the Council was aware of containers in 2007 does not mean it accepted for the purposes of the ground (d) appeal that a material change of use had occurred before the relevant date of 1 July 2009. It was therefore not unreasonable for the Council to contest and resist the appeal.

¹ APP/V1505/C/19/3234450, APP/V1505/C/19/3234451

² APP/V1505/C/19/3234447, APP/V1505/C/19/3234448

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

Andrew Walker

INSPECTOR