
Costs Decisions

Hearing Held on 14 April 2021

Site visit made on 15 April 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2021

Costs application in relation to Appeal A1 Ref: APP/X1545/C/20/3249912
Costs application in relation to Appeal A2 Ref: APP/X1545/C/20/3249912
Land at The Barn, Honeypot Lane, Tolleshunt Knights CM9 8ER

- 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 Maldon District Council for a full award of costs against, in the case of appeal A1, Mr Malcolm Payne and, in the case of appeal A2, Mr John Payne.
- The hearing was in connection with an appeal against an enforcement notice alleging:
 - a. The hearing was in connection with an appeal against an enforcement notice alleging The unauthorised material change of use of the Land to a mixed use comprising of external and internal storage use, a workshop, a caravan site for the stationing of a caravan (marked as C on the attached plan) used for residential purposes and the use of part of the building B2 (its location and approximate extent shown hatched in blue on the attached plan) for residential purposes.
 - b. Unauthorised operational development for the material external alterations to the building marked B1 on the attached plan and the erection of shed associated with the use of the caravan.

Costs application in relation to Appeal B1 Ref: APP/X1545/C/20/3249914
Costs application in relation to Appeal B2 Ref: APP/X1545/C/20/3249914
Land at The Barn, Honeypot Lane, Tolleshunt Knights CM9 8ER

- 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 Maldon District Council for a full award of costs against , in the case of appeal B1, Mr Malcolm Payne and, in the case of appeal B2, Mr John Payne.
- The hearing was in connection with an appeal against an enforcement notice alleging unauthorised material change of use of the Land to residential (use class C3) with associated operational development.

Costs application in relation to Appeal C1 Ref: APP/X1545/C/20/3249916
Costs application in relation to Appeal C2 Ref: APP/X1545/C/20/3249916
Land at The Barn, Honeypot Lane, Tolleshunt Knights CM9 8ER

- 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 Maldon District Council for a full award of costs against , in the case of appeal C1, Mr Malcolm Payne and, in the case of appeal C2, Mr John Payne.
- The hearing was in connection with an appeal against an enforcement notice alleging:
 - a. The hearing was in connection with an appeal against an enforcement notice alleging The unauthorised material change of use of the Land to a mixed use comprising of external and internal storage use, a workshop, a caravan site for the stationing of a caravan (marked as C on the attached plan) used for residential purposes, change of use of the land shaded red, to residential use (use class C3) with associated operational development and the use of part of the building B2 (its location and approximate extent shown hatched in blue on the attached plan) for residential

- purposes.
- b. Unauthorised operational development for the material external alterations to the building marked B1 on the attached plan and the erection of shed associated with the use of the caravan.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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 application seeks a full award of costs for substantive reasons, relating to the issues arising from the merits of the appeal. The Council suggests that the appellants' arguments in support of this appeal were unreasonable such that they constituted behaviour that has led to it incurring unnecessary expense in the appeal process.
3. The Council suggests that the appellants' arguments needed to be reasonable and were not on sound footings. They suggest that the appellant has sought to misguide the process and lacked preparation in relation to certain aspects of legislation. I note that the appellants have been professionally represented throughout the process and have taken that into account in coming to my decision on this application for costs.
4. I note that the appellants did not understand the implications or effect of the planning enforcement order dated 16 January 2020, nor associated case law. This had a substantial effect on the arguments put forward in support of the appeal and they appeared to be seeking to persuade me to overturn the order. It is unclear what legal advice was taken by the appellant at the time of the Council applying for, and being granted, the planning enforcement order through the Magistrates Court or during this appeal. Neither is it clear what advice the Council had given as to the implications of the planning enforcement order either when that or the enforcement notice were issued.
5. The Council allege that the contents of the Planning Contravention Notices (PCN) conflicted with the arguments put forward through the appeal, including in sworn statements. It is unclear to what information this relates as the Council have not identified either which PCN their concerns relate to, nor particular questions within those PCNs. The appellant suggests it is in relation to a question on the PCN dated 12 December 2016 about whether any buildings are used in association with the caravan. That answer does appear to be inconsistent with the evidence presented, although the appellants suggest they misunderstood the question. Answers to questions in the same PCN relating to the dwellinghouse also appear somewhat inconsistent with the evidence submitted later in stating that construction started in May 2009 and was finished prior to first occupation in March 2010, when the PCN states that it started being occupied as a residential dwelling. However, later evidence indicated that it was constructed as a garage and used as such until it was converted to a dwelling in March 2010. I would be prepared to accept in relation to the first point that the appellant had misunderstood the question and the answer to the second is somewhat vague and ambiguous. There is

nothing unreasonable in misunderstanding a question on a PCN, nor in being somewhat vague and ambiguous.

6. The evidence presented suggested that the appellants did not understand that a new breach of planning control, in this case a new mixed use, would start a new immunity period under section 171B of the Town and Country Planning Act 1990. I am not convinced that the appellants sought to misdirect the process regarding the planning unit and need for the breach of planning control to be continuous. Rather, this indicated a misunderstanding on the part of the appellant. There was reference to the uses within the mixed use moving around the site, but even if it were wrong, it was not unreasonable to suggest this might not have affected either the breach or the planning unit.
7. My attention has been drawn to the works to the piggery/shed, which I think are referring to building B1. The Council suggest that it was unreasonable of the appellant to consider that they were so minor as to not require planning permission. However, neither is it clear from the enforcement notice or the Council's case how extensive they considered the works to be. The lack of clarity from the Council appears to have led to a misunderstanding on the part of the appellant in relation to the Council's concerns. That is not unreasonable behaviour.
8. Given my decision to quash the enforcement notice under appeals A, I have not needed to consider the ground (a) appeal so cannot determine whether or not the proposals were in accordance with the development plan or whether material considerations would have overcome that conflict. Nevertheless, I note that the breach of planning control included residential development in a District without a five year supply of housing land and that implications may arise from that in terms of planning policy. I would also have needed to take account of the previous lawful use of the site. Whilst I am unable to assess what I may have concluded on this ground of appeal in this costs decision, nor how effective the arguments put forward may have been, I consider it was not unreasonable to put forward a case under ground (a).
9. The appellant had a right to understand the nature of the allegations against them. By their own admission, the Council served two sets of enforcement notices (those under appeals A and B, and that under appeal C) to give the appellant flexibility. It seems to me that appeals were, therefore, expected by the Council. I note that I have also made a number of changes to the enforcement notices in order to get them in order. It is clear, on this basis, that it was not unreasonable for the appellant to submit appeals against these enforcement notices such that the application for a full award of costs must fail.
10. Taking account of all the above, there have been a number of misunderstandings by the appellants in this case. The nature of the enforcement notices, including that they repeated alleged breaches of planning control in more than one notice along with the need for a number of variations and corrections to all three notices, indicates this was a complex case such that these misunderstandings cannot constitute unreasonable behaviour.
11. The Council suggest that the appeal should have proceeded by written representations and it was unreasonable for the appellant to request and push for a hearing. However, the Council had requested an Inquiry by email dated 2 March 2021 that would have been likely to put the Council to greater expense. I had also indicated an Inquiry may be most appropriate given the grounds of

appeal and anticipated evidence. Consequently, the actions of the appellant in this regard were not unreasonable.

12. For the reasons set out above, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs must fail.

AJ Steen

INSPECTOR