The Planning Inspectorate

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 A 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 Malcolm Richard Payne for a full award of costs against Maldon District Council.
- The hearing was in connection with an appeal against an enforcement notice alleging:
  a. 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 B 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 Malcolm Richard Payne for a full award of costs against Maldon District Council.
- The hearing was in connection with an appeal against an enforcement notice alleging the unauthorised material change of use of the Land to residential (use class C3) with associated operational development.

Costs application in relation to Appeal C 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 Malcolm Richard Payne for a full award of costs against Maldon District Council.
- The hearing was in connection with an appeal against an enforcement notice alleging:
  a. 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.

Preliminary Matter

2. An application for costs was submitted by the appellant prior to the hearing. This was revised following the hearing and it is the later application for costs that forms the basis of this decision.

3. Although the form for the application for costs refers to all three appeals, the application only relates to appeals A and C. I will deal with the costs on that basis.

Reasons

4. 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 on procedural grounds, relating to the appeal process, and on a substantive basis, relating to the issues arising from the merits of the appeal.

5. Enforcement notices A and C allege mixed uses that include storage, workshop, residentially occupied caravan, day-room in a building and a dwellinghouse. The appellant suggests that elements of the mixed use taking place have been ongoing for sufficient time to become lawful. They suggest it was unreasonable for the Council not to take account of evidence of those individual elements of the mixed use continuing for a period in excess of ten years such that they had become lawful. However, even if some elements have proceeded for sufficient time to have become lawful, the mixed use as a whole may not be lawful. Consequently, the Council did not act unreasonably in this regard.

6. The Council have suggested that storage moving around the site was a relevant factor and I see no reason to consider that suggestion unreasonable even if it may not be correct.

7. My attention has been drawn to how the Council have dealt with certain evidence, specifically relating to Council Tax and the Electoral Roll. The relevance of this is unclear, given my conclusions on the planning enforcement order. However, it is unlikely that the Council's assumptions were unreasonable even if they had been wrong.

8. It is clear from the arguments put forward by the appellant that they did not understand the effect of the planning enforcement order on the site. This has affected whether the evidence relating to the planning unit and the use of land needed to be considered. As I have set out in my main decision, the argument that this site along with Krissimon Farm were a single planning unit until the re-built house was sold was not unreasonable.

9. It has been suggested that the Council only referred to building B1 not being substantially completed in their response to the costs application. However, this is the phrase used at Section 171B(1) of the Town and Country Planning Act 1990 so even if it were not referred to in the evidence, it would have been necessary for me to take into account in coming to my decision. It was pointed out during the hearing that work stopped on the building when requested by

the Council rather than when it was finished, so it was clearly accepted that the work was not complete. Consequently, not using the phrase 'substantially complete' has not affected the outcome of the appeal and no unreasonable behaviour has arisen as a result.

10. The application for costs refers predominantly to appeal A and the related issues in appeal C. At paragraph 5 of my main decision I summarised the enforcement notices, that appeals A and B constituted two uses and appeal C related to a single use comprising the same uses. At the hearing, the Council suggested that one of the reasons for issuing three notices was to give the appellant the most flexibility. However, that meant it wasn't clear whether the Council considered the mixed use included the dwellinghouse. Given that it allowed flexibility to the appellant, on balance I consider that it did not constitute unreasonable behaviour.

11. The investigations by the Council as to the lawfulness of development on the site have been ongoing for a very considerable period of time. The appellant implies that the Council could have taken action much earlier. It is unclear why the Council weren't more prompt, but whilst more pro-active investigation and action may be desirable, this does not amount to unreasonable behaviour in this instance.

12. I have been referred to a case at Manor Farm and inconsistencies in how the two cases have been dealt with. However, each case needs to be considered on its own merits and it is unclear why these inconsistencies are unreasonable in this instance.

13. I note that the representations by the Council were concise. However, I do not take that to mean that they did not consider the matters proportionately. The quantity of written evidence provided does not necessarily reflect the quality. In this case, the implications of the planning enforcement order mean that the amount of evidence was proportionate.

14. 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