



Costs Decision

Hearing Held on 13 July 2021

Site visit made on 13 July 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Costs application in relation to Appeal Ref: APP/L2820/C/19/3240085 Land Title 217277 situated at Greenfields Top Field, Braybrooke Road, Braybrooke, Northamptonshire

- 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 Mr Vasile Dinu for a full award of costs against North Northamptonshire Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging, without planning permission, a material change of use from agricultural land to a mixed use of agriculture and the stationing of a mobile home to facilitate a carpentry workshop, manufacturing of bee hives and storage of ancillary equipment.
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Decision

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

The submissions for Mr Vasile Dinu

2. The application was made in writing. The following additional points were made orally at the hearing:
 - The Council's entire approach has been to assume that there has been a breach of planning control without investigating it thoroughly. It has acted on the appellant's reference to a woodworking workshop in his response to the Planning Contravention Notice (PCN) without having a proper understanding of the appellant's use of the site. It has not taken proper account of the fact that the appellant is a lay person and that English is not his first language.
 - The Council should have asked itself if the workshop was a use in its own right. The PCN should have prompted more questions.
 - A letter dated 9 July 2019 to the appellant was heavy-handed and contained errors and matters that were not relevant. It refers to criminal offences, which would only apply once a notice is not complied with.
 - The Council has demonstrated a lack of competence in its handling of the appeal. It has spent time considering whether or not the structure is a caravan.
 - The officer's report shows no consideration of whether the mobile home could be ancillary to the lawful use of the site if the woodworking were to

cease or of the scale of the development, which was a relevant consideration.

- The Council knows the manufacturing is of bee hives but never considered whether there has been a material change of use.
- If the appellant succeeds on ground (b) then costs should follow.

The response by North Northamptonshire Council

3. The Council's response to the application was made in writing. The following additional points were made orally at the hearing:
 - The Council served a PCN. In his response, the appellant indicated that the mobile home was a woodworking workshop. In these circumstances it was not unreasonable of the Council to proceed as it has and issue the notice. The notice was correctly drafted.
 - The substance of the letter dated 9 July 2019 was unobjectionable, especially in the light of the PCN.
 - If the appeal on ground (b) fails, the costs application must fail also, as the Council's actions could not be said to have caused an unnecessary appeal. But if the appeal on ground (b) succeeds, that does not mean that the Council acted unreasonably.

Reasons

4. The Government's 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. Unreasonable behaviour can be procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal). Examples of where a local planning authority's behaviour might lead to an award of costs are set out at Paragraphs 047 Reference ID: 16-047-20140306, 048 Reference ID: 16-048-20140306 and 049 Reference ID: 16-049-20140306.
5. There are a number of strands to the claim of unreasonable behaviour, and I deal with these in turn.

The Council's general conduct

6. The appellant's agent telephoned the Council while he was visiting the site to discuss the case. The case officer was not available. Her line manager spoke to the appellant's agent but refused to discuss the case in detail. The call is referred to in the agent's Witness Statement.
7. The PPG advises that refusing to enter into pre-application discussions, or to provide reasonably requested information can constitute unreasonable behaviour. However, that cannot mean that the Council must agree to discuss a case at any time of the appellant's choosing and I see nothing unreasonable in the line manager's actions in this instance. Although it is claimed that the line manager misled the appellant's agent regarding the extent of his knowledge of the site, that is disputed by the Council and the evidence before me does not show that unreasonable behaviour arose as a result of the telephone call.

8. The purpose of the Council's letter dated 9 July 2019 appears to have been to bring about a cessation of the breach of planning control without resorting to an enforcement notice. That seems to me to be an entirely reasonable action to take. It was appropriate for the Council to make the appellant aware of the potential implications of a notice and I do not regard its reference to criminal offences to be heavy handed in that context. The reference to permitted development rights in the letter was not relevant but is not indicative of unreasonable behaviour.

Investigation prior to issuing the notice

9. The PPG confirms that, for enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate.
10. In this instance the Council issued a PCN as part of its investigation. In response to a question about the use of the land, the appellant referred to beekeeping and also advised that the caravan was used as a woodworking workshop and for the storage of beekeeping equipment. This appears to have formed the basis of the allegation in the notice, which refers to, 'a carpentry workshop, manufacturing of bee hives and storage of ancillary equipment'. While English is not the appellant's first language, the PCN was, on its face, competently completed and it was not unreasonable of the Council to use that information to frame the notice. In any event, I have concluded that the allegation in the notice is fundamentally correct.
11. It is clear that the site was visited during the investigation and that attempts were made to meet with the appellant and his agent prior to issuing the notice. While I understand that a phone call promised by a Council officer was not made, the information before me suggests that the investigation prior to issuing the notice was not inadequate overall.
12. While the Council appears to have been sceptical regarding whether beekeeping was taking place at the site, I have no reason to suppose that that had any bearing on the Council's decision to issue the notice. Indeed, although the Council now accepts that beekeeping takes place, it remains of the view that a breach of planning control has occurred. Nor has it led to any error in the notice, which makes no reference to whether beekeeping is taking place or not.
13. The officer's report contains adequate information about the site and explains why a breach of planning control was considered to have occurred, including consideration of whether the mobile home was being used for purposes ancillary to agriculture. It is clear from the report that the Council considered the question of whether a material change of use had occurred. Given the contact that had taken place with the appellant, it was not unreasonable for the report to comment that there was, 'no written response from the landowner or agent to substantiate why no breach of planning control had taken place', even if a request had not been made in those specific terms.

The notice

14. It is argued that the notice failed to identify the use of the mobile home. However, it is clear from the reference in the notice to the mobile home facilitating various uses that the allegation is that it is being used for those purposes. In upholding the notice I have replaced the word 'facilitate' to improve its clarity, but there can be little doubt in any event about what was meant.
15. In allowing the appeal on ground (f) I have changed the requirements of the notice in order to properly reflect the allegation, and I agree with the appellant that, in that regard, the notice as drafted was unsatisfactory. However, the Council's error was not of a type or extent as to amount to unreasonable behaviour in my judgement. The only other change I have made to the notice is to the period of time for compliance, a matter of planning judgement. I have found the notice to be otherwise satisfactory and am not persuaded that it was at odds with established case law to an extent that can be characterised as unreasonable.
16. During the appeal the Council queried whether or not the mobile home on the site is a caravan for planning purposes. In so doing, it appears to have been suggesting that it might be a building, contrary to the allegation in the notice.
17. However, the notice refers to a mobile home and is correct in that regard. Moreover, it is evident that the Council attempted to meet with the appellant on site prior to issuing the notice, which might have enabled it to clarify matters relating to the unit. In any event, the point did not prove to be problematic and did not materially affect the appeal. The appellant's agent was able to deal with the matter briefly in his statement and it was also addressed quickly at the hearing, both sides agreeing that the structure is a caravan. Consequently, it does not appear to me that it has caused any unnecessary or wasted expense.
18. The appellant is critical of the Council for failing to review its case following the lodging of the appeal. However, since the Council's position was not fundamentally flawed in my view, it was not essential for it to change its case. While the appellant has had success on grounds (f) and (g), the Council's response to these grounds of appeal was adequate and not unreasonable.

Conclusion

19. For the reasons set out above I conclude that there has not been unreasonable behaviour leading to unnecessary or wasted expense and the application for an award of costs therefore fails.

Peter Willows

INSPECTOR