
Costs Decision

Site visit made on 20 October 2021

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 November 2021

Costs application in relation to Appeal Ref: APP/D0840/C/20/3263873 land east of Fordland View, Moorgate, Advent, Camelford, PL32 9QH

- 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 Kevin Baker for a full award of costs against Cornwall Council.
 - The appeal was against an enforcement notice alleging operational development and the material change of use of agricultural land to the stationing of camping pods and residential paraphernalia.
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Decision

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

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 applicant alleges that the Council failed to conduct a proper investigation and the appellant has been put to costs in having to make an appeal when the enforcement notice was flawed and the Council failed to review their case when challenged by the appellant, and refused to enter into discussions prior to the time period for making an appeal expiring.
4. In respect of the ground (e) appeal, the Council failed to properly check the titles registered at the land registry; failed to review the case; failed to provide copies of the PCN and have no records of the PCN having been received with the appellant denying ever having received a copy. The Council acknowledge that when the initial land registry search was made, it appeared that there was only one owner, but a notice was served on the land to cover other parties with an interest and a PCN was sent to the appellant. I note that the case officer met with Mr Baker at his request to discuss the unauthorised development only a short period after the Council state that the PCN was sent. It is also surprising that Mr Baker made no reference to other persons having an interest in the land at the meeting.
5. Notwithstanding the PCN issue, the Council failed to interrogate the land registry records adequately to identify all interests in the land. However, I have not found any injustice arising to the parties as a result of the Council's failure to serve notice on the Yeo's, and I find the absence of any subsequent contact with the Yeo's by the Council, or for that matter by the appellant, to be

- surprising. The Council's approach to the serving of the notice is in error, but not to the extent that the interests of other persons have been prejudiced, and not to the extent that an award of costs can be justified.
6. In respect of the ground (d) appeal, the appellant states that a cursory review of the available evidence prior to the issue of the notice would have identified that the Council's case was not as clear cut as originally believed, and, that despite being informed of the Streetview photos the Council refused to review the matter. The appellant considers that this resulted in the starting point for assessing any breach was fundamentally mistaken.
 7. The Council acknowledge that images showed conflicting dates and that they also relied on evidence drawn from a visit by a rating officer in 2015, drawing the conclusion that there was a reasonable doubt as to whether the site was in residential use at the time suggested by the appellant. Notwithstanding the fact that it appears the Council failed to appreciate the dating convention in the Google Earth images, and perhaps failed to question the value of the rating officer's note, I consider that the evidence submitted by the appellant was not so clear cut only to lead to one conclusion about when a change of use may have commenced. Whilst land may have been fenced off, it does not mean that a material change of use occurred instantly as such changes inevitably take time before becoming material.
 8. In respect of the ground (g) appeal, the appellant claims that compliance period demonstrates a lack of empathy with the users of the pods in contravention of government policy and a ban on evictions, and again the Council refused to alter their position.
 9. These ground (g) comments are not relevant to an application for an award of costs as they relate more to the planning merits of the stationing of the pods on the land. I also note that whilst the appellant has made an application for a full award of costs, he accepts that the stationing of the pods requires planning permission and explained that one of the reasons for wanting the notice to be withdrawn was that he could not afford the fee for a ground (a) appeal. This appears to be a no more than an attempt to defer enforcement action that the Council considered was necessary in the public interest and has little to do with an application for an award of costs.
 10. The appellant's comments that the Council failed to enter into discussions and refused to withdraw the notice does not represent unreasonable behaviour. The Council responded to the written points raised by the appellant prior to the expiry of the time for lodging an appeal confirming that they had reviewed the investigation and that it was satisfied on the evidence held that the notice had been correctly served, that it accurately described the breach and that its requirements were clear, proportionate and reasonable. It was pointed out that the appeal process provides the opportunity to challenge the notice.
 11. Although the Council could have acted more diligently in respect of ownership and dates of photos, this does not amount to unreasonable behaviour and I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

P N Jarratt

Inspector