
Costs Decisions

Inquiry Held on 28, 29 and 30 September 2021

Site visit made on 30 September 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 30 November 2021

Costs application in relation to Appeal Ref: APP/C1435/18/3218015 Land at Ironside, Flitterbrook Lane, Rushlake Green, Warbleton, East Sussex TN21 9QH

- 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).
 - **Application A** is made by Mr Andy Long for a partial award of costs against Wealden District Council.
 - **Application B** is made by Wealden District Council for a full award of costs against Mr Andy Long.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the erection of a building for use as a dwelling in the approximate position shown coloured green on the plan attached to the enforcement notice.
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Costs Application A

Decision

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

The submissions for Mr Andy Long

2. The submissions were made to the Inquiry in writing, so I need not repeat them in full. In brief, the partial award is sought because it is argued that the Council acted unreasonably in issuing a notice that affected all of the land at Ironside when the alleged breach was in relation to a small part of the land. This was corrected at the Inquiry, but the applicant had already prepared, submitted and secured witnesses in relation to the whole site. The applicant considers that the Council could have served a Planning Contravention Notice (PCN) and that he tried to meet with Council Officers to resolve the issues.
3. In addition the Council's enforcement notice is based entirely on the conclusions of its consultant structural engineer. The report produced by the engineer was unfit for purpose, but the Council persevered with its enforcement action.

The response by Wealden District Council

4. The response of the Council was provided verbally. In summary the Council considers that the notice is commendably clear and if anyone reads it they would understand that it relates to the erection of a building marked green. The red line area did not need to be redrawn but as a matter of clarity it is better redrawn around the building. Regardless the notice set out what it is

targeting – the building. The Council could have served a PCN, but the Inquiry has shown that despite anything the applicant has tried to advance the Council has robustly maintained its position. Mr Long's case is that the structure is a caravan and not a building and therefore a PCN and/or meetings would not have avoided the serving of the notice or the appeal. The application is hopeless and should be dismissed.

Reasons

5. The 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.
6. Awards against a local planning authority may be either procedural or substantive. The PPG advises for enforcement action, local planning authorities must carry out adequate prior investigation. Local planning authorities 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.
7. Whilst I appreciate the applicant sought to engage with the Council prior to the issue of the notice, this costs regime is largely confined to the appeal process itself. Nevertheless, there was some engagement between the parties prior to the enforcement notice being issued. The Council commissioned a report from Mr Sheppard, a structural engineer, to *'inspect a residential building within the site/grounds of Ironside'* and consider and provide commentary as to whether the building meets the construction, size and mobility tests within the Caravan Sites Act 1968 (CSA 1968).
8. Given time limited immunity was an issue, it was not unreasonable for the Council to progress with formal action without serving a PCN or without having the report it had commissioned from Mr Sheppard.
9. The plan attached to the enforcement notice indicated that the land affected by that notice was a larger area than the actual alleged breach related to. Nevertheless, the enforcement notice clearly relates to the erection of a building. Whilst the description of the alleged breach also states *'for use as a dwelling'* there is no reference to a material change of use or the residential use of the land anywhere else within the notice. The requirements of the notice relate to the building and its occupation.
10. During the Inquiry the Council confirmed that the enforcement notice only relates to the operational development associated with the construction of the structure and the hardstanding below it. Both parties agreed that if I corrected the notice by substituting the plan attached to the enforcement notice with an amended plan, with the red line drawn around the structure, that no injustice would be caused. That correction is required to ensure that there is clarity as to what land is affected by the enforcement notice and its requirements.
11. The fact that the applicant produced evidence and secured witnesses in relation to the whole of the land, its use and whether the residential use of the land had gained immunity from enforcement action appears to have stemmed from his assertion that the structure is a caravan and not a building. It is clear that Mr Long complicated the implications arising from where the red line had been

drawn on the plan. I do not consider that the Council acted unreasonably by issuing the enforcement notice with the red line drawn around the wider area.

12. Prior to the Inquiry the applicant sought to raise his concerns, with the Council, regarding the content of Mr Sheppard's report. The Council did not meet with the applicant and Mr Sheppard provided an addendum to his original report relating to Mr Long's concerns. Mr Sheppard conceded at the Inquiry that his submitted reports, in support of the Council's case, contained assumptions based on some inaccurate information regarding the structure's method of construction. However, his oral evidence set out his reasons why he continued to disagree with the applicant in relation to the construction and the mobility tests. The Council has set out its reasons for drawing the conclusions it has and has provided evidence to the Inquiry.
13. Although concessions were made, I do not consider these would have resulted in no enforcement action being taken or the appeal no longer being necessary. The appeal gave the applicant the opportunity to present his evidence on the balance of probabilities as to why the structure is not a building and why the hardstanding had gained immunity from enforcement action. I have found that the hardstanding is immune from enforcement action. However, I concluded within the ground b appeal, on the balance of probability, that the structure is a building and is not a caravan. The grounds of appeal involve judgments in relation to matters of fact and degree that are relatively complex. It was therefore not unreasonable for the Council to contest and resist the appeal.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Costs Application B

Decision

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

The submissions for Wealden District Council

16. The submissions were made to the Inquiry in writing and its response to Mr Long's rebuttal was given verbally, so I need not repeat them in full. In brief, the full award is sought because it is argued that the appellant acted unreasonably in pursuing an appeal which had no prospects of success. The Council also considers that Mr Long's submission and subsequent withdrawal of the parts of the grounds of appeal that were irrelevant in relation to the alleged breach of planning control was unreasonable and led to wasted costs incurred in addressing them.
17. The majority of Mr Long's ground (d) appeal addressed a material change of use and as such he went down a blind alley as the requirements of the notice and its allegation have always been clear that it was not aimed at a material change of use. However, that led to the Council wasting unnecessary resources responding to Mr Long's evidence in relation to a material change of use. That part of the ground (d) appeal was abandoned at the Inquiry.

The response by Mr Andy Long

18. The response of Mr Long was provided verbally. In summary he stated that the ground (d) appeal related to the land edged red and not the building. This was apparent from the beginning in letters he had sent to the Council. The area edged red was only amended at the Inquiry and Mr Moon confirmed under oath that the Council's position had to be clarified on day one of the Inquiry. In any event ground (d) was retained in respect of the hardstanding. The Council for what ever reason decided to ignore the implications of the area edged red for me and the other lawful uses on the site.

Reasons

19. The 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 PPG makes it clear that if the ground of appeal had no reasonable prospect of succeeding and/or an appeal is withdrawn without good reason that a party is at risk of an award of costs being made against them.
20. Whilst I have found that the onus of proof has not been met in relation to the ground (b) appeal Mr Long provided written and oral evidence as to why he considered that the structure was not a building and was in fact a caravan. Mr Woods's and Mr Miller's oral evidence to the Inquiry differed in relation the details of one of the lifting plans. However, there was agreement in relation to another of the lifting plans. Although the ground (b) appeal did not succeed it involved judgments in relation to matters of fact and degree that are relatively complex.
21. The appellant's ground (d) appeal did not seek to dispute that the erection of the building was immune from enforcement action. He withdrew the part of his ground (d) and (f) appeals that related to a material change of use of the land at the Inquiry after the parties agreed that I could replace the plan attached to the notice without injustice to them. After further discussion he confirmed that he wanted to retain his ground (d) and (f) appeals with regard to the hardstanding under the structure. I have found that the hardstanding is immune from enforcement action. Consequently, I do not accept the Council's proposition that the appeal had no prospect of success.
22. Furthermore, Mr Long has represented himself throughout the appeal process and he withdrew the part of his ground (d) and (f) appeals relating to the material change of use on day one of the Inquiry. I acknowledge that it was apparent from reading the whole of the enforcement notice that the alleged breach of planning control related to operational development and not a material change of use. However, Mr Long's mistake in this matter was understandable given his assertion that the structure was a caravan. He reviewed his position in light of the discussion and explanation that was provided at the Inquiry. That review and withdrawal of the irrelevant parts of the grounds of appeal invariably saved Inquiry time.
23. In any case, it is not clear why the Council considered it necessary to provide evidence rebutting the parts of the grounds of appeal relating to a material change of use as it clearly knew that the enforcement notice was aimed at operational development.

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

D. Boffin

INSPECTOR