



Costs Decision

Hearing held on 16 November 2021

Site visit made on 16 November 2021

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2021

Costs application in relation to Appeal Ref: APP/C3105/C/21/3268454 The Stables, Main Street, Great Bourton, Cropredy, OX17 1QU

- 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 Cherwell District Council against Mr James Doran for a partial award of costs.
 - The hearing was in connection with an appeal against an enforcement notice alleging a material change of use of the land to a residential caravan site.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Council's application relates to the appellant's withdrawal of the ground (d) appeal against the enforcement notice at the start of the Hearing. The application, and response to it on behalf of Mr Doran, are fully set out in the parties' written submissions. Hence, I need not repeat them in detail here.
3. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG lists some examples of unreasonable behaviour whereby a procedural or substantive award of costs may be justified.
4. The ground (d) appeal was lodged on the basis that the use of the appeal site as a residential caravan site was immune from enforcement action because it had been continuously so used for at least 10 years prior to the issue date of the enforcement notice.
5. The appellant's evidence in support of ground (d) relied upon a Statutory Declaration (SD) from the previous land owner, Mr Bolton, dated 13 August 2020. However, statements in Mr Bolton's SD claiming a continuous residential occupation of the site over the relevant 10 year period of time were directly contradicted by his own earlier questionnaire responses to a planning contravention notice (PCN) he had completed in 2019. Consequently, faced with a lack of any credible evidence the ground (d) appeal was withdrawn.

¹ Paragraph 030 ref 16-030-20140306

6. The Council say the appeal on ground (d) had no prospect of succeeding and should have been withdrawn much earlier in the appeal process so as to avoid wasted officer time and resources in preparing their case.
7. In response the appellant's agent representing him argues that the Council's PCN document was not a publicly available document and that he only became aware of it when it was received with the Council's appeal statement. (The Planning Inspectorate's records indicate it was sent to the appellant's agent on 13 April 2021, hence 7 months prior to the Hearing.)
8. In my view it should have been obvious to the appellant that the ground (d) appeal had no realistic prospect of success by 13 April 2021 at the latest, or shortly thereafter. Nevertheless, a further written statement from the appellant dated 14 July 2021 maintained the ground (d) appeal, and that remained the case until it was withdrawn shortly after the Hearing opened.
9. However, regardless of whenever it was that the torpedo blow to the appellant's case in the form of the Council's PCN evidence became apparent to him, it should be noted that where witness evidence to establish facts is to be relied upon, either orally or via sworn statements, it is the legal responsibility and duty of the relevant party, or any agent acting on their behalf, to ensure that such evidence is carefully checked for its truthfulness and accuracy. In this regard it is clear to me that the SD submitted in support of the appeal on ground (d) was manifestly inaccurate or untrue, and it was on that basis, from the outset of when the appeal was first lodged, that the Council incurred expense in preparing its case accordingly.
10. Submission of information in an appeal that is manifestly inaccurate or untrue amounts to unreasonable behaviour and in the circumstances of this case it resulted in unnecessary expense to the Council in preparing their case.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr James Doran shall pay to the Cherwell District Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred during the entirety of the appeal process in respect of the ground (d) appeal and this costs application; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mr James Doran, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Thomas Shields

INSPECTOR