The Planning Inspectorate

Costs Decision

Site visit made on 26 April 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/C3430/C/20/3264074
Former Munitions Depot, Lawn Lane, Coven, Wolverhampton WV9 5BA

- 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 South Staffordshire District Council against Telford 6 Limited for a full award of costs.
- The application is in connection with an appeal against an enforcement notice alleging a material change of use of the land to a mixed use of agriculture and for storage purposes including the parking and storage of commercial vehicles, commercial trailers including commercial box trailers, curtain side trailers and porta cabins together with waste materials.

Decision

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

Background

2. 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.

3. The Council's case is made out on substantive grounds, that in relation to all grounds of appeal pleaded (c), (d), (e), (f) and (g), there was no realistic prospect of success, and that this resulted in unnecessary or wasted expense by the Council in dealing with the appeal.

4. The appellant's response is set out in full in written submissions and so I need not repeat them here.

Reasons

Ground (c)

5. Some agricultural use of the land was acknowledged by both parties in their evidence. Hence, as agreed by both parties, the notice allegation was corrected to more accurately describe the breach as a mixed use of agriculture and storage[2].

[1] Paragraph 030 ref 16-030-20140306
[2] As set out in full in the corrected notice

6. However, agriculture is not 'development' and can be carried out on the land at any time. Hence, the appellant only had to demonstrate, on the balance of probability, that the introduction of the storage use onto the land did not result in a material change of use and a breach of planning control.

7. However, the appellant almost entirely relied on their own misinterpretation of the content of my colleague Inspector's Decision letter (DL) dismissing an appeal[3] against the Council's refusal of a lawful development certificate (LDC). It lent no support to the appellant's appeal for the reasons set out in my Decision. No convincing evidence that the storage use had not resulted in a breach of planning control was submitted. As such, I find that the ground of appeal had no realistic prosect of success and amounts to unreasonable behaviour.

Ground (d)

8. The appellant's evidence on this ground also relied heavily on misinterpretation of the content of the LDC DL. The use that was found not to be lawful in that case was *"storage of materials and goods, also the parking of transport and wagons"* (LDC DL para.17). Notwithstanding that the specific description of land use subject of the LDC appeal differs from the one in this latest appeal, the LDC DL does not conclude anywhere within it that storage activities had taken place on the land continuously for more than 10 years. No other substantive evidence to support the ground of appeal was submitted. Consequently, the appeal under ground (d) had no realistic prospect of success and thereby amounts to unreasonable behaviour.

Ground (e)

9. For the reasons set out in my appeal Decision, Brownshore Management, the appellant's planning agent, failed to provide evidence that they were an interested party requiring to be served with a copy of the notice pursuant to s172 of the Act. As a professional agent representing an appellant they should have been aware of the Act and its requirements, and that they were not in fact an interested party. Given the lack of any substantive evidence the appeal on this ground had no realistic prospect of success and hence amounts to unreasonable behaviour.

Ground (f)

10. Although the appeal on this ground failed for the reasons set out fully in the Decision, the appellant nonetheless made an arguable case, albeit it a weak one and included in part within the submissions under ground (g). Consequently, the appeal on this ground does not amount to unreasonable behaviour.

Ground (g)

11. The appellant did not propose a longer period of time for compliance. However, even in the absence of an appeal on ground (g), an Inspector on appeal can review the compliance period in an enforcement notice if considered necessary to do so. Hence, the failure to propose a longer period, in this particular case, does not by itself lead me to a finding of unreasonable behaviour.

[3] APP/C3430/X/20/3248280

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated with regard to the appeal on grounds (c), (d) and (e).

Costs Order

13. 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 Telford 6 Limited shall pay to the South Staffordshire District Council the costs of the appeal proceedings described in the heading of this decision, and this costs application, limited only to those costs incurred in respect of the appeal on grounds (c), (d) and (e); such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Telford 6 Limited, 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