



Costs Decision

Inquiry Held on 13 - 15 July 2021 and 7 December 2021

Site visit made on 8 July 2021

by J A Murray LLB (Hons) Dip.Plan Env DMS Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Costs application in relation to Appeal Ref: APP/U2235/C/21/3270626 Land at Tanner Farm Caravan Park, Goudhurst Road, Marden, Tonbridge, Kent, TN12 9ND

- 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).
 - The application is made by Arcadia Estates (Kent) Ltd trading as Tanner Farm Caravan Park for a full award of costs against Maidstone Borough Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the failure to comply with condition 3 of planning permission Ref 13/0794 granted on 24 June 2013 which required the approved multi-use building to be constructed in accordance with the approved plan 2191/P/30 A.
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Decision

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

Background

2. The applicant submitted a written application for costs. However, much of this related to previously linked appeals, one of which fell away on withdrawal of the relevant enforcement notice, and the other two were withdrawn by the applicant. Costs in relation to those appeals will be addressed in separate written applications to be determined by the Planning Inspectorate's Costs and Decisions team. At the Inquiry, I asked the applicant to highlight orally the issues relating specifically to the remaining appeal before me. These are outlined below.

The submissions for Arcadia Estates (Kent) Ltd

3. The enforcement notice is fundamentally flawed and should never have been issued. The Council made a mistake. It misunderstood the position, and the applicant has put considerable time, work, money, and trouble into addressing this.
4. Ms Lambert's submissions alter the Council's case. The Council did know that there was a residential use of the building, as shown in paragraph 4.4 of its Statement of Case, which refers to conversion to a house. To suggest the Council did not know is not borne out by its case, and it knew from the complaint in January 2018 that the building was being changed from what it was into residential use.

5. The factual backdrop is that the withdrawn enforcement notice was a morass of contradiction and confusion which was impossible to deal with; it was illogical, and no reason was given for the lawful development certificate refusals.
6. The Council suggests that the applicant rides roughshod over people. However, the Council's conduct was unreasonable; there was unreasonable behavior by planning professionals who should have known what they were doing, and this enforcement notice is another serious mistake. The applicant should be entitled to its costs.

The response by Maidstone Borough Council Reasons

7. The Council starts from the premise that the work done was not in accordance with the planning permission and it was not unreasonable to issue the enforcement notice. The Council does not accept that a mistake was made.
8. The evidence about what did or did not occur demonstrates there is a live issue. Even if the Council did make a mistake, that was not unreasonable behavior.
9. The Council had no evidence that a change of use to residential had taken place; it did not know until the last day of the inquiry.
10. The applicant refers to emails from Mrs King before the enforcement notice was considered. She gave evidence about the investigation and things she thought at the outset, which may have changed. There was nothing unreasonable in that.
11. The reference to tractor shed doors being removed are the words of the complaint; they are not the words of the Council, and it does not mean the Council agreed with them.
12. Closing submissions are in accordance with the notice as issued, and there has been no change of case. There has not been unreasonable behavior, especially where there is clearly a breach of planning control which needs to be enforced against.

Reasons

13. The Planning Practice Guidance (PPG) indicates that costs may be awarded against the party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or waste expense in the appeal process.
14. The enforcement notice alleged that the appeal building had not been constructed in accordance with the plan approved in the planning permission. Although alternative analyses were put forward in the Council's Statement of Case, it confirmed in opening that it was content to proceed on the basis of the allegation in the notice and the applicant gave evidence in relation to that.
15. However, the appellant's evidence did not persuade me on the balance of probability that the building was substantially completed in accordance with the approved plan, and I do not therefore agree that the notice was flawed, or that the Council made a mistake. Although I found that one of the notice requirements could be better worded, that was not indicative of a fundamental flaw.

16. Whatever the Council knew about the ultimate use of the building as a dwelling, this does not alter the conclusion on ground (b) that it was not previously substantially completed in accordance with the planning permission.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Any issues regarding possible unreasonable behaviour in the conduct of other previously linked appeals will be dealt with separately.

J A Murray

INSPECTOR