



Costs Decision

Site visit made on 7 December 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2022

Costs application in relation to Appeal Ref: APP/R1038/C/21/3272250 Land adjacent to 1 Swathwick Lane, Wingerworth, Chesterfield S42 6QW

- 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 Peter Rhodes for a full award of costs against North East Derbyshire District Council.
 - The appeal was against an enforcement notice alleging the unauthorised change of use of land from agriculture to residential use including the creation of a large concrete hardstanding and plinth and the installation of a water tank, diesel generator and diesel storage tank.
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Decision

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

Reasons

2. There are a number of strands to the claim of unreasonable behaviour, and I deal with these in turn.

The decision to issue the enforcement notice and its timing

3. It appears that the Council was aware of the matters targeted by the notice long before it was issued. However, I cannot see that any delay in issuing the notice can be regarded as unreasonable in itself. While I have concluded that aspects of the development had become lawful due to the passage of time before the notice was issued, the Council explained clearly its view that the time limits for taking enforcement action imposed by s171B of the Act had not been exceeded. While I have come to a different view, the Council had a respectable basis for the case it argued and did not act unreasonably in so doing.
4. It is argued that the Council has not substantiated why it now considers that the water tank is unauthorised development when it previously took the view that it was a chattel. However, the Council clearly explained why it took the view that the tanks and generator were not permanently installed initially, meaning that they did not amount to operational development at that time. Again, I have taken a different view, but the Council's assessment of the evidence available to it was not unreasonable.
5. For these reasons I can see nothing intrinsically unreasonable in the Council's decision to issue the notice in the form it did, when it did.

The alleged mixed use

6. The Council now says that the notice should have alleged a change of use to a mixed residential and commercial use rather than simply to a residential use. Ordinarily, the Council might not be expected to query its own notice. However, in this instance it is clear that the Council's view about the actual use of the land was influenced by information provided by the appellant during the course of the appeal. Clearly, the Council could not act on information before it was available to it. Nor could it fail to act if it felt that the new information cast doubt on the accuracy of the allegation in the notice. In these circumstances, it was not unreasonable of the Council to suggest that the allegation needed to change and that I correct the notice.

Refusal to withdraw the notice

7. I understand that the appellant twice invited the Council to withdraw the notice. However, since I have not found that the Council acted unreasonably in issuing the notice, it was not obliged to withdraw it. I have insufficient evidence to show that the Council failed to adequately engage with the appellant and I do not see that withdrawing the notice was a prerequisite to doing so. The taking of enforcement action is discretionary but it is clear that the Council considered it expedient to do so in this instance.

Failure to investigate all relevant matters

8. There is insufficient evidence to support the claim that the Council failed to investigate the matter with adequate thoroughness. It is evident that a good deal of information had been provided to the Council before the notice was issued as a result of various applications for certificates of lawfulness and planning permission. The fact that new information during the appeal process caused the Council to reassess the notice does not show that the investigation before the notice was issued was not thorough.

Conclusion

9. For the reasons set out above I conclude that it has not been shown that the Council behaved unreasonably. Consequently, it is not necessary to consider the question of unnecessary or wasted expense and the application for an award of costs fails.

Peter Willows

INSPECTOR