

Costs Decision

Site visit made on 15 April 2021

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 12th May 2022

**Costs applications in relation to:
Appeal Ref: APP/T2405/C/19/3226354**

Land known as Whitegate Stables and Spinneyside, lying to the north-west of Aston Firs Cottage, Rosevale Park, Hinckley Road, Sapcote, Leicester LE9 4LH

- 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 Anthony Peters for a full award of costs against Blaby District Council (the Council).
 - The Appeal was against an enforcement notice alleging the material change of use of the Land to a mixed use for agriculture and the deposit, transfer and processing (including burning) of waste.
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Decision

1. The application for an award of costs against the Council is refused.

The application

2. The application was for a full award of costs made in writing on behalf of the applicant by his agent and responded to in writing by the Council.

Submissions on behalf of the applicant

3. Firstly, the Council had been unable to provide evidence to prove that Mr Wicks had the authority to issue the enforcement notice.
4. Secondly, the photographs provided by the Council to support enforcement action were not all on the part of appeal site owned by and under the control of the applicant and which was plainly a separate planning unit. There was no evidence of an investigation before issuing the notice or that most of the evidence to support its case was obtained at the time the notice was issued.
5. Thus the Council acted unreasonably for several reasons listed in the examples given in Planning Practice Guidance (PPG), including the serious claim that the Council acted unreasonably in *"deliberately concealing relevant evidence at planning application stage or at subsequent appeal."*

Submissions of the Council

6. Despite using various methods of enquiry, ownership and control of the appeal site remained unclear and the case was complicated by the fact that as an appellant, the applicant used more than one name (Anthony Peters, Marcus
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Barney and Mr Smith) and more than one agent (Green Planning Studio Ltd and Hayward Architects Ltd) and not all communications with the applicant and his agents seemed to have been shared. The Council sought to clarify matters early on via a planning contravention notice, but that remained unanswered. The applicant refused to accept communication at the address on the Land Registry title document or at any other address and for a year had instructed no agent.

7. The reasons for issuing the notice were properly set out in the notice and issued by the Council in accordance with its constitution which made provision for those engaged under short term, agency or other non-employed situations.
8. For much of the appeal process the applicant was uncontactable, however the Council provided information so far as it could which was accurate and it has not concealed evidence.

Applicant's reply

9. The request for the delegated report of authority for the issuing the notice was not complied with and despite the constitution the delegation list failed to identify the contractor as having any of the posts detailed within it. If the Council were correct in its assertion, any member of staff employed by it in any post could issue a notice which would be incorrect. Nowhere in the Constitution is it set out that anyone other than a holder of one of the identified posts can sign and issue a notice.
10. The applicant only ever used GPS as his agent. the correspondence with Hayward Architects was not by way of representing him on the appeal, they acted for him in relation to work for a barn and stable.
11. The information that the Council (Mr Wicks) referred to was the injunction documentation, not the delegated report of authority requested. Subsequent removal of the redaction did not provide information of relevance to the appeal but was a breach of data protection legislation by the Council.
12. The Council failed to supply the delegated report of authority which amounted to the concealment of evidence. No Council officer wrote to explain how Mr Wicks had the authority to sign the notice, only Mr Wicks had responded on the matter.

Reasons

13. Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour can be procedural or substantive, relating to the issues arising from the merits of the appeal.
14. The Council had discretion to take enforcement action where it deemed it expedient to do so. The notice itself and the Council's appeal statement showed that consideration was given to expediency.
15. In the Appeal Decision I found that the notice was not a nullity as alleged, including having regard to the arguments put forward concerning the authority of the Council's chosen contractor to issue it. I was satisfied that the contractor

was constitutionally appointed to be responsible for all aspects of the enforcement case. There is no evidence whatsoever that any Council officer or appointed contractor withheld relevant evidence in the appeal process in order to gain an unfair advantage over the applicant for this award.

16. Whether it was in fact expedient to issue the notice or not was a matter on which a challenge should have been made directly to the Council through a court process, it was not an issue appealable under the grounds in s174 of the 1990 Act. The applicant did not appear to be the registered freehold owner of all the land comprised in the appeal site but I was satisfied that the enforcement notice had been properly served on those with an interest therein in accordance with the requirements of the 1990 Act and regulations made thereunder, and there was no good reason other than to treat the appeal site as an appropriate area of land over which to consider the materiality of the alleged change of use.
17. Whether there was subsequently a breach of data protection legislation is unclear to me, however it seems to me unlikely that any such breach in the circumstances described in this application, directly caused unnecessary or wasted expense in the appeal process.
18. I conclude that there was no unreasonable behaviour by the Council and the application is refused.

Grahame Kean

INSPECTOR