



Costs Decision

Inquiry Held on 8 and 9 February and 9 March 2022

Site visit made on 11 and 25 February 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Costs application in relation to Appeal A Ref: APP/K1128/C/21/3268326 Gerston Point, West Alvington, Kingsbridge TQ7 3BA

- 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 Mr Sean Thomas for a full award of costs against South Hams District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the land from use for agriculture to garden domestic use together with associated engineering works for installation of a skate bowl, tennis court, carport and storage building for domestic use.
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Costs application in relation to Appeal B Ref: APP/K1128/C/21/3268328 Gerston Point, West Alvington, Kingsbridge TQ7 3BA

- 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 Mrs Suzanne Thomas for a full award of costs against South Hams District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the land from use for agriculture to garden domestic use together with associated engineering works for installation of a skate bowl, tennis court, carport and storage building for domestic use.
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Decisions

1. The applications for awards of costs are refused.

Preliminary Matters

2. The applications for costs and consequent other representations were made in writing after the inquiry sat and during an agreed hiatus to deal with this, closing submissions and the execution of a planning obligation. The inquiry was eventually closed on 9 May. I will not repeat the entirety of the respective cases in this decision given that they have been provided in writing.
3. The applications attempted to reserve the appellants' (the applicant for this costs application) position regarding a further claim of unreasonable behaviour related to the joint execution of the planning obligation. I have received no further representations about this and the planning obligation was executed by all parties. I therefore will proceed on the basis that the outstanding aspects of this were undertaken reasonably by the main parties in the appeal.

Reasons

4. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice; to encourage local planning authorities to properly exercise their development management responsibilities and to discourage unnecessary appeals.
5. The enforcement notice related to the material change of use (MCU) of the land, and required the cessation of that change of use but also the removal of the operational forms of development on the land. A basic element of the appellants' costs application is that the Council accepted during the inquiry that the MCU of the land for domestic use is acceptable. They consider that a change of use notice should not have been used in order to remove operational developments.
6. It is a basic tenet as set out in s173(4)(a) of the Act that an enforcement notice may require that the breach of planning control is remedied by discontinuing any use of land or by restoring the land to its condition before the breach took place. Section 173(5), furthermore, gives examples of what an enforcement notice may require, including at (a) "any buildings or works".
7. Accordingly, it was held in *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598 where an enforcement notice is issued in respect of a MCU, and works were carried out to facilitate the MCU, that the notice may require that the 'ancillary' works are removed in order that the site is restored to its previous condition and the breach is remedied. Other cases were also referred to me which I did not consider because the appeal succeeded before I had to consider ground (f), whether the steps required by the notice exceed what is necessary to achieve its purpose. It is unnecessary for this costs application to go into these or other cases to any great extent. However, I consider that the Council submitted a case that was arguable rather than acting clearly contrary to or not following well established case law as suggested by the applicants in referring to the PPG. The notice was not invalid in these respects. If I had gone on to consider ground (f), it would have been a judgement based upon the legal principles set out in those cases and the Council had taken account of those.
8. The appellant had submitted 2 planning applications in an attempt to retain the change of use and the operational developments. The reports leading to those refusals had concentrated on the unacceptability of the physical developments rather than the MCU. Meaningful common ground could not be agreed before the public inquiry. In my view, notwithstanding the Council's position on the merits of the change of use in principle, I consider that it was reasonable, in circumstances where there has been unauthorised development comprising both change of use and physical works, to have regard to the way that the unauthorised development has been undertaken as a whole.
9. It is fair to say that had the Council enforced against the operational developments within 4 years of their completed construction, the possible appeal that would have resulted may have been far simpler for all parties to deal with. That is what the Council have been mostly concerned about. The

Council did write to the appellants in March 2018 in order to commence a dialogue about the apparent breach of planning control. However, they did not take action for reasons that are not clarified but that in itself does not mean that they acted unreasonably.

10. Some of the complexity of the case has also resulted from some of the appellants' arguments about the appeal on grounds (d) and (e) which I found tangential. This does not excuse any lack of clarity by the Council in preparing their case in the appeal or prior to that or their failure to take action earlier against the matters that they were primarily concerned about. However an appeal was always going to be necessary to resolve a dispute where both sides acknowledge harm to the important designated landscape has occurred due to the manner in which unauthorised development has been undertaken.
11. The PPG makes it clear that for a successful award of costs, it is necessary to show that a party has both acted unreasonably and that the unreasonable behaviour has directly caused another party to incur wasted expense. In this case, I consider some of the Council's lack of clarity was unreasonable as was them not taking action earlier with respect to what they were mainly concerned about. Overall however it has not been demonstrated to what degree this has resulted in any wasted expense by the applicants in a situation where an appeal was always likely to occur from the point at which the unauthorised development was undertaken.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

A Harwood

Inspector