The Planning Inspectorate

Costs Decision

Hearing Held on 12 July 2022

Site visit made on 12 July 2022

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Costs application in relation to Appeal Ref: APP/C1760/C/20/3265518
Land at Valley Field Park, London Road, Leckford, Hampshire SO20 6DE

- 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 Mrs Christine Reed for a full or in the alternative a partial award of costs against Test Valley Borough Council.
- The hearing was in connection with an appeal against an enforcement notice alleging Without planning permission, the material change in use of the land from use as a residential caravan site for 5 caravans to use as a residential caravan site for 7 caravans.
- The costs application and the response were made orally at the hearing.

DECISION

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

THE APPLICATION AND REASONS

Submissions for Mrs Christine Reed

The main points are:

2. The costs application is made in a timely manner and is only in the event of success on grounds (b) and (c).

3. When considering enforcement action a local planning authority has a duty to ensure adequate prior investigation. Unreasonable behaviour includes not following well-established case law.

4. The Council was made aware in 2015 of the *Metal and Waste Recycling* judgements and the *Reed* judgement in an application for a certificate of lawfulness. In this appeal against the enforcement notice, the grounds of appeal refer to these judgements and copies were submitted in the documents with the appeal statement.

5. The Council made no reference to these judgements in the two reports considering enforcement action and in the appeal statement. In the Council's Final Comments, a reference is made only indirectly by inclusion of an appeal decision where they were considered by the Inspector. At the hearing nothing was said on the judgements.

6. Therefore the Council has not followed well-established case law when deciding to enforce, in the appeal statement or at the hearing. If they had done so,

they would have concluded no material change of use took place and they would not have issued an enforcement notice.

7. The Council was confused over whether four or five caravans were lawful, which affected the baseline position. Reliance was placed on appeal decisions that pre-dated the judgements. No consideration was given to the material changes on site since 2003/2004. They were dealing with intensification, yet this was not addressed at all. The Council's approach was confused and ill-considered.

8. Therefore the enforcement notice should not have been issued. An award should be made for all costs that have been incurred in the appeal.

9. In the alternative, if the primary case is not supported, the Council should have kept their case under review. The grounds of appeal and the appeal statement showed that the appellant relied heavily on case law, which is binding on all. However, the Council did not address the cases at all in their rebuttal.

10. Accordingly, if it is decided the Council did not behave unreasonably in issuing the notice, there was unreasonable behaviour in that the notice should have been withdrawn through case management.

11. In the Council's response to the costs application, they did not say they took any account of the two judgements before issuing the notice.

Response by Test Valley Borough Council

12. The Council disagreed that they had not addressed the judgements cited – the rebuttal statement addressed case law.

13. The Council submitted they had not been misdirected when considering if a material change of use had occurred and believed their approach and assessment were correct.

Reasons

14. The Planning Practice Guidance advises that costs may 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.

15. The appeal has succeeded on ground (c) and therefore the appellant's costs application is for consideration. The primary argument is with respect to the substance of the matter under appeal, in that the Council failed to follow well-established case law.

16. In the officer reports considering whether or not to take enforcement action the Council clearly had in mind relevant case law, noting that whether or not a material change in use had occurred fell to be considered by reference to the character of the land. The Council recognised that intensification is capable of being of such a nature and degree as itself to affect the definable character of the land and its use and thus give rise to a material change of use. The Council also stated that mere intensification, if it falls short of changing the character of the use, would not constitute a material change of use.

17. The Council reasonably gave careful attention to the various appeal decisions in making such a judgement on a fact and degree basis. This initial analysis is reflected in the subsequent appeal statements and comments. I would not

expect the Council's planning officer to make legal submissions on case law at a hearing. Even though I came to a different conclusion on the planning judgement as to the materiality of change, an award of costs does not necessarily follow the outcome of the appeal.

18. The enforcement notice sets out in clear terms that the baseline position is a residential caravan site for 5 caravans. The Council dealt with the planning history of the site in some detail, including changes post 2003/2004, as demonstrated by the officer report and its appeal case. In the assessments the effects brought about by the additional two caravans were considered in some detail.

19. The Council kept its case under review, submitting a rebuttal and a supplementary statement. The rebuttal sought to address the appellant's case, including the case law cited.

Conclusion

20. I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in Planning Practice Guidance has not been demonstrated.

Diane Lewis

Inspector