

Costs Decision

Inquiry held on 29 June and 5 August 2021

Site visit made on 30 June 2021

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

an Inspector appointed by the Secretary of State

Decision date: 26th September 2022

**Costs application in relation to:
Appeal Ref: APP/T2405/C/19/3226289**

Land known as Whitegate Stables, 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 Isaac Doherty 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 residential caravan site.
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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 orally before me. The Council responded orally.

Submissions on behalf of the Applicant

3. The Council should not have issued the notice but should have issued a notice alleging a breach or breaches of condition. The allegation of a material change of use (MCU) without planning permission had not been made out and the Council had erred in law in taking this enforcement action. The applicant should be awarded its full costs.

Submissions of the Council

4. The application is based on the view that the wrong breach of planning control was identified. The Council adopted the planning contravention notice (PCN) procedure and sent PCNs to the 15 or so occupants of the site. No replies were received although the PCNs were hand delivered and posted, save for one reply (made by the agent on behalf of the appellant). That reply stated the use the subject of the PCN was being carried on pursuant to a planning permission that the applicant now says was irrelevant, and stated that the applicant/appellant had moved into a mobile home on the appeal site in 2015.
 5. The Council was sceptical of what was claimed as to ownership and occupation of the site and sought to clarify the position. The applicant/appellant chose not to reply and up until the inquiry had chosen not to identify the planning
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permission or the conditions attached thereto, that he now acknowledged he had been in breach of. The applicant may not complain in these circumstances that the Council chose to use the broadest terms to address what was an obvious and clear breach of planning control.

6. The notice was intended to address all the issues that might have arisen, and all such issues needed to be addressed because the applicant had chosen not to cooperate with the Council, even today.
7. The Council is unjustifiably criticised for not investigating and proving evidence clearly available to the applicant who chose not to produce comprehensive evidence that might have foreshortened these proceedings. There was nothing unreasonable in the Council's pursuit of enforcement action. If proceedings had to be extended that was entirely the fault of the applicant. The Council had always tried to narrow the issues and avoid unnecessary argument but still seemed to be facing criticism. The application was clearly at odds with guidance on costs awards.

Applicant's reply

8. It was obvious that this was a breach of condition case. It had to be assumed the Council understood this but it contrived to create a breach of planning control by financing non-gypsies to go onto the site and stay there permanently, with the result that they (the non-gypsies) were in breach of the conditions limiting their stay and prohibiting non-gypsy use. The Council was therefore guilty of "cant" and "hypocrisy".

Reasons

9. 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. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviours and actions at the time of the application can be taken into account.
10. Substantive examples of unreasonable behaviour, potentially relevant here, include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
11. The Council had discretion to take enforcement action where it deemed it expedient to do so. The guidance on enforcement was that action is taken in the public interest and to maintain integrity in decision making. The Council's appeal statement showed that proper consideration was given to expediency.
12. In the Appeal Decision I determined that the relevant planning permissions at issue were not extant when the enforcement notice was issued and served on the appellant. In those circumstances a notice that alleged by way of a breach of planning control, a breach of any condition attached to those permissions would not have withstood scrutiny on appeal. For these reasons the decision to issue the notice as an allegation of development without planning permission was reasonable, as indeed was the Council's behaviour in all other respects.

13. The appellant's barrister made a number of wild allegations against the Council in an impassioned speech during closing, as well as in the application for costs. I do not consider them further, except to say that I have concluded that there was no unreasonable behaviour by the Council.
14. The application is refused.

Grahame Kean

INSPECTOR