



Costs Decision

Inquiry Held on 17 October 2022

Site visit made on 17 October 2022

by M Madge Dip TP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Costs application in relation to Appeal Ref: APP/F2360/C/21/3272573 Hiltons Farm, 2 Jane Lane, Midge Hall, Leyland PR26 6TQ

- 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 South Ribble Borough Council for a full award of costs against Mr T Day of T Day Solutions Ltd.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a material change of use of land and buildings to a mixed use of residential, agricultural engineering, general engineering, fabrication of agricultural buildings and storage associated with that mixed use.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for South Ribble Borough Council

2. The costs application was made orally at the inquiry, with a written copy handed up.
3. The Council claim that the appellant's case is a re-running of the unsuccessful arguments from the previous LDC appeal without attempting to adduce any new relevant objective evidence to evolve their arguments. This is substantially unreasonable.
4. Three of the grounds of appeal, (b), (d) and (f) were conceded by the appellant's planning witness, which strongly illustrates the unreasonableness of the appellant's case. The ground (b) appeal was withdrawn; however the appellant pursued the conceded grounds (d) and (f) appeals. It is incumbent on the appellant to consider whether there is a reasonable prospect of the appeal succeeding and the burden of proof rests with the appellant in respect of an appeal against an enforcement notice.
5. The appellant was not acting 'in person', he had at least 3 professional or ex-professional witnesses within his assembled team. The witness evidence did little to assist the Inspector, with witnesses evading or deflecting questions that would have aided the Inspector in determining which of the April 1999 or November 1999 plans to prefer on the balance of probabilities and why.
6. The appellant's witnesses commented several times at the inquiry that they were seeing a critical Council document for the first time, despite the majority having been provided in the Council's Statement of Case on 9 June 2021 or in the Council's proofs on 26 April 2022.

7. Following the Council's successful defence of the LDC appeal, they provided the appellant with a full and reasoned explanation of their position, before issuing the enforcement notice. Conversely the appellant's case was brought in an unclear way, there was never any attempt by the appellant or his witnesses to grapple with the reality of the case, which had no reasonable prospect of succeeding.
8. If the appellant had properly grappled with the Council's case and the previous Inspector's findings, then this appeal would not have been brought. The entirety of the inquiry was therefore unnecessary. The Council has incurred significant costs to resist this substantively unreasonable appeal and is entitled to a full award of costs.

The rebuttal for Mr Trevor Day of T Day Solutions Ltd

9. Parties to an appeal are normally expected to meet their own costs, it is at the discretion of the Inspector to award costs where it is shown that a party has accepted unreasonably resulting in unnecessary costs to the other party. An award of costs does not necessarily follow the appeal decision.
10. The previous appeal was dealt with by way of written representations, the oral evidence, relative to grounds (c) and (d), provided by Mr Day, Mr Hoerty, Mr Schiller and Mr Coxhead was not therefore previously considered or evaluated. To bring another appeal was not automatically unreasonable.
11. The Covid pandemic has prevented attendance at the planning department to review documents such as plans available on the Council's planning file.
12. Only the ground (b) appeal was withdrawn as Mr Schiller only made 'acknowledgements' in respect of the other grounds. Mr Coxhead's oral evidence was of significance and corroborates the appellant's claims.
13. Witnesses did their best to assist the inquiry as best they could recollect, in keeping with their professional obligations, notwithstanding the passage of time and their obligations to tell the truth. Responses were measured, objective and proportionate. The late production of the core bundle prevented witnesses having access to all relevant documents well in advance of the inquiry.
14. The costs of this appeal have arisen from the Council's failure to retain a site plan properly delineating the extent and curtilage of the site granted planning permission on 24 November 1999. Furthermore, the Council maintains 'a site plan' on its website that does not accurately reflect the extent of the 1999 PP. That 'site plan' on the website is a critical matter upon which the appellant relied in pursuing and maintaining the appeal.
15. Regardless of the extent of the 1999 PP, the appellant maintains that the alleged mixed-use has been carried out from the appeal site for more than 10 years. This is confirmed in Mr Coxhead's cogent, persuasive and immovable evidence on the uninterrupted usage of the site.
16. The appellant has not been substantively unreasonable in bringing or continuing with the appeal, which does and did have a reasonable prospect of success.

Reasons

17. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs can only be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
18. The PPG advises that appellants should exercise the right of appeal in a reasonable manner and is at risk of an award of costs against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when *"in enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant. Sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. The appellant is at risk of an award of costs, if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question"*¹.
19. While the final sentence seems to relate to ground (a), I agree with the Council that the rest of the principle applies. The ground (c) and (d) appeals formed the bulk of the appeal, which had been extensively dealt with by Inspector Phillips in June 2020. For the reasons set out in my appeal decision, the oral evidence provided by the appellant's witnesses went no further than could be derived from the written submissions in respect of the earlier appeal. Furthermore, Mr Coxhead's recollection of the development of the land and buildings did not accord with the documented progression of the engineering business or Mr Day's own evidence or that of Mr Green.
20. It was not part of the appellant's case that they had not been able to access the Council's planning file due to the Covid pandemic. Even if they had, the Council has confirmed that planning services remained fully functional throughout. I have no doubt therefore that, had a copy of the planning file been requested, it would have been provided.
21. Similarly, had the appellant identified their confusion regarding the extent of the land forming the basis of the 1999 PP, it could have been addressed in advance of lodging the appeal. Also, as the appellant's reliance on this website plan was not disclosed until the submission of their POE, I fail to see how it could have reasonably formed the basis for the appellant's pursuance and maintenance of the appeal.
22. The core document bundle published on 13 October 2022 was an amalgamation of all previously submitted documents. The Council's Statement of Case (including supporting documents) was therefore available to the appellant and their witnesses from 9 June 2021 and their Proofs of Evidence from 21 June 2022, considerably earlier than 13 October 2022. All other documents within the core bundle were provided by the appellant or their witnesses. The appellant was not therefore prejudiced by the delayed publication of the core document bundle.
23. As no substantive evidence was submitted to support the grounds of appeal or address the Council's reason for issuing the enforcement notice, the appellant acted unreasonably in the submission of this appeal. Furthermore, the

¹ PPG paragraph: 053 Reference ID: 16-053-20140306

appellant submitted no additional evidence to address the previous Inspector's reasons for dismissing an appeal against the Council's refusal to issue a lawful development certificate. The oral evidence of the appellant's planning witness resulted in the withdrawal of the ground (b) appeal and concessions that the material change of use had not occurred until the primary workshop relocated to the appeal site in 2017, and that there were no lesser steps capable of remedying the breach of planning control.

24. I therefore find that substantively unreasonable behaviour by the appellant, resulting in unnecessary or wasted expense as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

25. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that T Day Solutions Ltd shall pay to South Ribble Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The Applicant is now invited to submit to T Day Solutions Ltd, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Madge

INSPECTOR