
Costs Decision

Inquiry Held on 1 November 2022

Site visit made on 2 November 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Costs application in relation to Appeal Ref: APP/B3438/C/20/3244823 Fox's Croft, Ankors Lane, Thorncliffe ST13 7LP

- 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 Eric Fox for a partial award of costs against Staffordshire Moorlands District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the erection of a portal frame shed, the construction of a bound concrete hardstanding, and the provision of a hard surface with compacted plainings ("the Operations"); and, on completion of those "Operations", the change of use on the land to a use for the purposes of keeping, maintaining, repairing and restoring machinery, vehicles and trailers ("the Use").
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Decision

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

Reasons

2. The costs application was submitted in writing. The responses were also made in writing.
3. 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.
4. One of the specific purposes of the costs regime is to ensure that local planning authorities exercise their responsibilities properly, including carefully and appropriately considering enforcement action. Unreasonable behaviour in that regard includes preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan and other material planning considerations. In this case, the appellant argues that when the Council carried out its enforcement investigations it failed to have full and proper regard to a lawful development certificate (LDC) granted in respect of the use of the land and the associated evidence upon which that LDC was granted.
5. Therefore, the appellant contends that the Council has enforced against a use which has been taking place on the land for a period well in excess of 10 years and is therefore immune from enforcement action or, in any case, is lawful by virtue of the granted LDC. Accordingly, it is argued that the Council has actually taken enforcement action against a use which has already been determined to be lawful and against operational development of hardstanding

areas which were immune from enforcement action. Furthermore, it is argued that the Council's treatment of the development is inconsistent with how it dealt with the LDC granted in 2017.

6. Consistency in planning decisions is an important principle of planning law and therefore in discharging their statutory duties, local planning authorities should act in a procedurally correct manner. If the local planning authority in this case has failed to discharge their duties properly and in a correct manner and their behaviour is consequently found to have been unreasonable, they may be liable to an award of costs against them.
7. It is the Council's case that a material change of use occurred after the erection of the portal frame shed which is also the subject of the enforcement notice. The Council's position is that the change of use occurred after the building was erected and therefore after the date on which the LDC for residential use of the land was granted. According to the Council's case the use has changed so that it is no longer incidental to the enjoyment of Fox's Croft.
8. The Council's case is partly based on their premise that a material change of use has occurred since the LDC was issued and that the use of the land is no longer incidental to the enjoyment of the dwellinghouse. This is based on their judgement that when the current portal frame shed was constructed the building and associated land were no longer used for mixed domestic storage but became used for a single use for keeping, maintaining, repairing and restoring machinery, vehicles and trailers. The reasons for the Council's position are the large physical size of the shed which has allowed the appellant to separate his hobby activities from domestic use, the position and orientation of the shed, the range of specialist tools and equipment in the shed and the photographic evidence that in their view in 2018 the portal frame shed did not appear to be used for domestic uses. Finally, it is argued that since his retirement the appellant has had more time to spend on working on his tractors and other machinery.
9. There is insufficient evidence that the alleged use has intensified since 2017 when the portal frame shed was erected, nor is there evidence that the use for keeping, maintaining, repairing and restoring machinery, vehicles and trailers became the only use of the land. Indeed, the photographs taken by the Council in 2018 show tractors, associated equipment and domestic related paraphernalia including building materials, timber and other equipment that may be used in association with the residential use of the land. The appellant stated that other domestic storage items would have been present in the building at that time but are hidden by the tractors and are not seen in the photographs. Having visited the site I do not doubt that this may well have been the case.
10. The 2018 photographs also show a JCB digger on site, but the appellant's explanation for that is that it was there on a temporary basis for carrying out work on the land and it has not been on site since. Therefore, its presence does not mean that a material change of use of the land has taken place.
11. Consequently, whilst I can see that the land has as a matter of fact been used for the purposes of keeping, maintaining, repairing and restoring tractors, that is not the sole or exclusive use of the land distinctive from its wider general domestic use, nor did the use alleged commence on the completion of the operations stated in the Enforcement Notice.

12. On the basis of the evidence presented I do not find the Council's approach to the use to be inconsistent with a previous planning decision it has made or unreasonable in other respects even though, as set out in my main decision, I do not agree with their conclusions. Instead, on the whole evidence before me I conclude that on ground (b) the alleged material change in the use of the land has not occurred as a matter of fact.
13. Even though the Council now appears to accept that the requirement for the land to revert to a grassed surface is not necessary that falls short of showing that they behaved in an unreasonable way by pursuing enforcement action for the material change of use and associated operations.
14. Even though I have come to a different planning judgement to the Council about whether there has been a material change in the use of the land that does not mean they have been unreasonable in pursuit of enforcement action. I have allowed the appeal on various grounds that does not mean that an award of costs against the Council is automatic, but only should such an award be made where it has been demonstrated that unreasonable behaviour on their part has taken place and that such behaviour has caused the appellant to incur unnecessary and wasted expense in the appeal process.

Conclusion

15. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and the application for an award of costs is refused.

A A Phillips

INSPECTOR