



Costs Decision

Hearing Held on 22 November 2022

Site visit made on 22 November 2022

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Costs application in relation to Appeal Ref: APP/A2525/C/20/3258547 Land on the East side of Baulkins Drive, Sutton St James

- 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 John Smith for a full award of costs against South Holland District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging Without planning permission the change of use of the land from agricultural use to a caravan site.
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Decision

1. The application for a full award of costs is refused. However a partial award of costs against South Holland District Council is approved in the terms set out below in the Costs Order.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the handling of the enforcement notice prior to the appeal or procedural matters during the appeal. Examples of unreasonable behaviour may include: -
 - failing to carry out adequate prior investigation.
 - withdrawal of any reason for refusal or reason for issuing an enforcement notice.
4. The appellant's case is that the Council failed to determine the Gypsy status of the appellant and therefore investigate the case properly. Accordingly it did not apply Policy 20 of the Local Plan, as it should have done. This resulted in the original grounds for the service of the notice, namely concerns regarding impact on character and appearance and the sustainability of the location being effectively withdrawn at a late stage in the process. Subsequently the Council

¹ Reference ID: 16-030-20140306

then sought to rely on a new ground for the enforcement notice, namely flood risk.

5. The Council refutes the allegation that it failed to carry out adequate prior investigation. It suggests that the appellant was not open about his true development intentions and says that it requested a retrospective planning application from the appellant which was not forthcoming. It says that the supporting information provided in relation to the withdrawn reasons for the notice, and also in relation to flood risk, would all have been required to support a retrospective planning application in any event.
6. The enforcement notice regulations require that the notice must set out the reasons why the Council considers it expedient to issue the notice. The Council would be expected to set out the case that the appellant has to answer.
7. The Council could reasonably be expected to be proactive about establishing its reasons for serving an enforcement notice. Whilst it was not required to serve a planning contravention notice, it seems to me that once it became clear to the Council that mobile homes were being placed on the land it could have taken steps to investigate the purpose of such action. It appears to me that this would very likely have led to the Gypsy status of the appellant being established and the various criteria tests in Policy 20 being applied at the earliest stage.
8. There is no suggestion that the Council's decision to withdraw its original reasons for issuing the enforcement notice, and therefore the expediency for taking enforcement action, was influenced by the substance of the appellant's evidence in relation to those reasons, as opposed to it simply becoming understood that this was a Gypsy related development case. Accordingly I am not persuaded that had the Council become aware of the appellant's Gypsy status, prior to the issue of the notice, it would have pursued the original reasons for issuing the notice. It follows then that it would not have been necessary for the appellant to submit evidence to support the appeal in terms of sustainable location and character and appearance impacts.
9. Whilst the Council complains that the appellant had the opportunity to submit a retrospective planning application and that had it done so the information submitted in support of the appeal would have been required in any event, it is normal practice to only invite such applications when there is a likelihood, or at least a possibility, of planning permission being forthcoming. In this case it is hard to reconcile an invitation for a retrospective planning application with the strong likelihood of such an application running into a dead end because of the Council's rigid stance with regard to flood risk. Indeed the Council actually set out in correspondence to the appellant that in light of the flood risk position *"it would be counterintuitive to invite an application for the development given that we would be unable to support it from an officer perspective"*².
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated by the failure to identify the Gypsy status of the appellant and the reliance on reasons for issuing the notice that were later withdrawn. A partial award of costs is therefore justified.

² Council email dated 5 January 2021

11. Ultimately the Council resists the grant of planning permission because the development is deemed to be contrary to flood risk policy as set out in Policies 4 and 20 of its Local Plan. This, it says, justifies the service of the enforcement notice. Whilst this reason has been introduced at a late stage in the process, and whilst I did not agree with the substance of its case in this regard, there is nothing to persuade me that the Council did not at least give consideration to the reasoning and conclusions within the appellant's flood risk assessment. Indeed the Council accepted at the Hearing that the risk of the site being exposed to flooding was low. However this did not mean the Council was duty bound to find the development policy compliant and acceptable on flood risk grounds nor that this position must be outweighed by other considerations. Nor has there been any information provided to persuade me that the Council was duty bound to have consulted with external consultees regarding this matter or that the concern expressed regarding conflict with development plan policy did not amount to adequate substantiation of its case in this regard.
12. I am not therefore persuaded that the Council's strict stance equates to it having acted unreasonably in reaching the conclusion that it did regarding flood risk. Furthermore the appellant has had the opportunity to respond in full to the Council's case in this regard, having also set out welfare related considerations in support of the appeal. Accordingly the appellant has not been prejudiced in this regard. This however does not overcome the concerns that I have raised above with regard to the investigation and the withdrawal of reasons for issuing the notice.

Costs Order

13. 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 South Holland District Council shall pay to Mr John Smith, the costs of the appeal proceedings, limited to those costs incurred in relation to producing information in support of the appeal against the aborted reasons for issuing the notice, namely on grounds of character and appearance and the site not being in a sustainable location; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
14. The applicant is now invited to submit to South Holland District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Merrett

INSPECTOR