
Costs Decision

Inquiry Held on 8 December 2022

Site visit made on 7 December 2022

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: Friday, 20 January 2023

Costs application in relation to Appeals A & B

Refs: APP/H2265/C/21/3281643 & 3281644

The Bend, Riding Lane, Hildenborough, Tonbridge, Kent TN11 9LR

- 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 Steven & Mrs Stephanie May for a full award of costs against Tonbridge & Malling Borough Council.
 - The inquiry was in connection with appeals against an enforcement notice alleging the material change of use of Green Belt land for the purposes of the open storage of vehicles (B8 use), and further unauthorised development of the Land.
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Decision

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

The submissions for Mr & Mrs May

2. The application is made on procedural and substantive grounds.
3. Regarding the procedural ground, the appellants point out that the Council's Proof of Evidence was only produced one working day before the Inquiry, rather than 4 weeks and did not provide a timetable or indicate who the witness would be as required by the Enforcement Inquiry Regulations.
4. They argue that this caused them unnecessary additional expense by causing extra preparatory work that would not otherwise have arisen. In particular, given the very late submission of the Council's Proof and the documents attached to it including the Council's photographs of the site from 2020 and 2021, it was necessary to discuss this material in an additional meeting with their legal representatives, including their solicitor who charges by the hour, rather than the whole issue being dealt with in one go.
5. In regard to the substantive grounds, the appellants argue that the notice was vague in that it referred to 'further unauthorised development', namely the tent and plastic shed, which was a ludicrous position to advance, as the Council's witness would have appreciated had he actually undertaken a site visit.
6. Its case was also hopelessly muddled in that its proof was contradictory in terms of whether it was alleging a business/commercial use of the Land, in particular the reference to that in paragraph 5.1 of Mr Amekor's Proof.
7. Additionally, Mr Amekor wasted time in cross-examination by repeatedly dwelling on planning policy matters and repeatedly referring to why planning

permission would not be granted for the use taking place, rather than considering whether the Land was residential curtilage, which the appellants claim is the key issue in this case.

8. Also, if Mr Amekor had bothered to conduct a site visit in advance of writing his Proof, he would have concluded that there was no basis for serving the notice and it would have been likely to have been withdrawn.

The response by Tonbridge & Malling Borough Council

9. In regard to the costs application on procedural grounds, the Council accepts that the late submission of its Proof was unreasonable but claims this has not resulted in unnecessary or wasted expense. That is because the Inquiry would still have had to address the issues raised even if it had been submitted on time and because the vast majority of its arguments had already been provided in its Statement of Case, which was produced on time.
10. Regarding the substantive grounds, the requirements of the notice in relation to the 'further unauthorised development' were not vague because the requirement to remove the green tent, shed and hard surface were individually listed and the Council was entitled to advance that argument at the Inquiry as to why it required their removal, which it did.
11. The Council's case was not hopelessly muddled; mention of a business use in paragraph 5.1 of Mr Amekor's Proof was clearly an error, as paragraph 6.2 and the Statement of Case makes clear.
12. In terms of Mr Amekor's responses on why the change of use was material, why it would affect the Green Belt and why it was contrary to development plan policy, none of this was unreasonable because it was pertinent to the Council issuing its notice; his failure to address the curtilage issue was irrelevant because the Council's case was that there had been a material change of use harmful to the Green Belt and contrary to Council policy.
13. Regarding his own failure to visit the site, this was unnecessary because he was able to see from outside the site that unauthorised use was still continuing, as per the notes and photos of the previous visits by enforcement officers in 2020 and 2021.
14. In any case none of these substantive issues resulted in any unnecessary expense because they would always have had to be addressed at the Inquiry.

Reasons

15. Planning Practice Guidance states 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.¹ Costs applications may be made for procedural or substantive reasons or both, as is the case here.

Procedural Ground

16. I understand why the appellants and their legal representatives felt it necessary to have another meeting to discuss the Council's Proof including the photos submitted as part of the appendices thereto. I also agree that if the

¹ Reference ID: 16-030-20140306

Council's Proof had been submitted 4 weeks before the Inquiry that such an additional meeting would not have been necessary. Accordingly, I agree with the appellants that the unreasonable late submission of these documents has led to unnecessary additional expense because these matters would have been discussed in one such meeting had they been submitted in time. The wasted expense to the appellants is therefore the cost of their solicitor's time in holding this additional meeting, because it was only necessitated by the late submission of these documents.

Substantive Grounds

17. Although I have amended the alleged breach in the notice, its Requirements were not vague and the Council was quite entitled to argue that such allegedly related items should be removed, whether or not they comprised 'development', and however ludicrous the appellants may consider this to be.
18. I do not accept the Council's case was hopelessly muddled; paragraph 5.1 in Mr Amekor's Proof is an unfortunate mistake and it is clear from the rest of it, from the Council's Statement Of Case and in the cross-examination of Mr Amekor at the Inquiry that it is not advancing any case that a business use is occurring on the Land.
19. The notice requires the cessation of the unauthorised alleged use and the allegedly related tent, storage shed and hardstanding and the Reasons for Issuing the notice explain why its issue was necessary in terms of harm to the character of this Green Belt area and consequent conflict with a number of development plan policies. Whilst some of Mr Amekor's responses to cross-examination questions were rather repetitive in this respect, the Council were entitled to expand on this at the Inquiry. It was not necessary for him to specifically address the issue of curtilage because the Council's case was plainly that a material change of use had occurred, which in its view went beyond a purpose incidental to the enjoyment of the dwellinghouse, albeit he could have stated this in terms directly.
20. Regarding Mr Amekor's failure to visit the site, whilst this lent little credence to the Council's case overall as I say in paragraph 15 of my appeal decisions, that was a matter for the Council to decide. Whether or not him visiting the site before the Inquiry would have led to the withdrawal of the notice is a matter of pure speculation. Just because I have found that no unauthorised development has been taking place on the site does not negate the Council's reliance on evidence from the visits of previous officers in 2020 and 2021 because it is clear that the approximate number of vehicles parked on the site then and now have not significantly changed, nor the manner of their use.
21. For all these reasons I dismiss the appellants' application on these substantive grounds.

Costs Order

22. 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 Tonbridge & Malling Borough Council shall pay to Mr & Mrs May, limited solely to the partial costs of the appeal proceedings described in paragraph 16 above,

specifically the last sentence in that paragraph; such costs to be assessed in the Senior Courts Costs Office if not agreed.

23. The applicant is now invited to submit to the 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.

Nick Fagan

INSPECTOR