
Costs Decision

Site visit made on 10 January 2023

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

an Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Costs application in relation to Appeal Ref: APP/M0933/C/22/3298385 Eden House, Conishead Grange, Red Lane, Bardsea LA12 9QH

- 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 Ernst Liehr for a full award of costs against South Lakeland District Council.
 - The appeal was against an enforcement notice alleging:
 - I. Operational development including erection of a single storey (with mezzanine) timber building on the area of the building coloured green (Building C) on the attached plan, which has occurred within the last four years.
 - II. Part material change of use comprising 2 primary uses: a holiday complex and self-catering holiday accommodation.
 - III. Use of highlighted spaces highlighted yellow in connection with the buildings B & C.
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Decision

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

Reasons

2. 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. 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.
3. In this case, the appellant argues that it is perverse that the Council has continued with enforcement action when no evidence has been presented to show a breach of planning control and such behaviour is unreasonable. There is also concern about the use of the buildings as self-catering holiday accommodation and that the Council has relied on the evidence of a neighbour without undertaking their own investigations. The appellant contends that further investigations would have avoided the need to serve an enforcement notice or could have at least reduced the scope of the current appeal.
4. The evidence before me shows that the Council undertook enforcement action following the details submitted by the appellant pursuant to a Planning Contravention Notice (PCN) which confirmed that Building B had been used as overflow accommodation and the Building C was to be used as a holiday let. There was also some evidence that guests occupying the buildings were causing noise and disturbance to local residents. In addition, the evidence from a previous planning application stated that Building B was being used as

overflow sleeping accommodation for the main buildings and that Building C was replaced in 2018 and it was hoped to use it as a holiday let.

5. In a previous appeal there was no dispute that a sui generis holiday complex use was occurring on the land. In addition there was no argument from the appellant that self-catering holiday accommodation is a use that falls within the use as a holiday complex or was ancillary to a holiday complex. In the previous appeal decision, the Inspector considered that the alleged breach of planning control would more properly be described as "*a material change of use to two uses: a holiday complex and self-catering holiday accommodation*". That is indeed the description used on the enforcement notice the subject of the current appeal.
6. Based on the evidence that was before the Council when it served the enforcement notice and on my own observations and conclusions, the Council carried out proper investigations and based their decision to issue the enforcement notice on such evidence, including a PCN, previous planning application and previous appeal decisions. That evidence also includes details provided by the appellant himself.
7. Therefore, I do not find that the Council behaved unreasonably in the service of the enforcement notice.
8. There is also concerns regarding the timescales for the determination of a planning application, but that is a separate issue from the current appeal. As such, the Council's behaviour in that regard does not fall to be determined under the current costs application.

Conclusion

9. 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