



Costs Decision

Site visit made on 5 January 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2023

Costs application in relation to Appeal Ref: APP/P0240/C/21/3287338 Land adjacent to Fairground Site, Mill Lane, Biggleswade, Bedfordshire SG18 8AZ

- 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 James Harris for a full award of costs against Central Bedfordshire Council.
 - The appeal was against an enforcement notice alleging: Without planning permission, the material change of use from agricultural land to the mixed use of storage of fairground equipment, motor vehicles, trailers, caravans, miscellaneous storage of various fairground paraphernalia and the siting of caravans for residential use and general industrial use.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The PPG goes on to explain that amongst other things, an aim of costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case. Unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. The Council did not provide a statement with any evidence to substantiate their case for taking enforcement action. The applicant has applied on the basis that this was unreasonable and resulted in them incurring unnecessary professional fees.
4. I allowed the appeal on ground (b) in so doing correcting the enforcement notice and furthermore on ground (d). I considered, on the balance of probabilities, that the breach had commenced more than 10 years before the notice was issued. I did not need to go on to consider the other grounds including the planning merits. There is no obligation on the parties to submit supporting information but it is generally good practice to do so.
5. In considering the Council's case, I therefore had to rely upon what had been prepared by them at the time of authorising the issuing of the notice. This

included a detailed officer report with some evidence such as a dated aerial image but photographs which were not dated. However, some of the key matters were not in dispute in the appeal and were fairly clear-cut. For instance, it was agreed that a breach of planning control had taken place. Whilst the ground (d) appeal subsequently succeeded, at the time of issuing the notice, based upon what information the Council had including representations from the appellant, I can see that it may not have been clear to them that the breach of planning control was immune from enforcement action. Where there is doubt it is not unreasonable for the Council to reserve their position by issuing an enforcement notice and then reviewing their case once an appeal has been lodged.

6. The appellant's main evidence in the form of a sworn statutory declaration, was prepared after the notice was issued and after the appeal had been submitted. There is no indication, from what has been submitted, that the Council reviewed the case afterwards. Had they done so, they may have decided to withdraw the notice although the evidence required fact and degree judgements to be made. It is not entirely clear that they would have reached the same judgement as I have in the appeal if they had reviewed that evidence. Again, keeping the notice in place to enable the independent scrutiny of it through the appeal process is a reasonable position to take.
7. Even if the lack of submitted evidence had involved a degree of unreasonable behaviour, the appellant's costs after the submission of their statement and the sworn statutory declaration were limited. Their final comments letter was only submitted to address the comments that had been submitted by the Town Council. Ironically, the lack of an appeal statement by the Council and their reliance upon what had been considered prior to issuing the notice prevented the appellant having to spend more time commenting on it. Furthermore, had the notice been withdrawn, there would have been no formal determination and a further submission may have been necessary.
8. The lack of the submission by the Council of a supporting statement with more evidence was not unreasonable in the circumstances of this case. Even if it was considered as unreasonable, the appellant has not justified why this has resulted in any unnecessary expenditure.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Andy Harwood

INSPECTOR