
Costs Decision

Site visit made on 7 March 2023

by Katie Peerless Dip Arch RIBA

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

Decision date: 21 March 2023

Costs application in relation to Appeal Ref: APP/M1710/C/21/3272527 Land adjacent to Mountain Ash, 112 White Dirt Lane, Horndean, Waterlooville PO8 0TW

- 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 Robert Saunders for a full award of costs against East Hampshire District Council.
 - The appeal was against an enforcement notice issued by the Council in relation to an alleged material change of use of land to residential garden serving Mountain Ash, 112 White Dirt Lane, Horndean, Waterlooville PO8 0TW.
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Decision

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

The case for the Appellant

2. The appellant has put his claim in writing and I will not reproduce it in detail here but, in essence, he notes that the Council included additional land in the enforcement notice, which was the second to be issued in respect of the alleged breach at the site. The Council also failed to forward documents attached to the questionnaire and their statement of case to the Planning Inspectorate within the correct time frame and the appellant claims this is gross negligence and an injustice to himself.

The case for the Council

3. The Council has acknowledged the fact that documents were not sent within the time frame but submit that this was a genuine mistake due to having minimal resources at the time because of the pandemic. It is also claimed that it was a computer failure that prevented the Council's statement from being sent on time. This was discussed on the following day in July 2021 with a manager at PINS and a request to allow the document to be re-submitted was denied.

Reasons

4. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only 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 application for an award of costs at appeal can be based on procedural matters (as in this case) or substantive matters that relate to the planning merits of the case.

5. Firstly, I do not consider it was unreasonable of the Council to have included the additional land in the second enforcement notice. It was considering the situation that existed on site at the time and, although I have concluded that the alleged breach was not occurring on this part of the land, this was as a result of taking into account the information that the appellant had subsequently submitted. This matter followed the normal appeal process and the appellant has not been put to any wasted or unnecessary expense in this regard.
6. Secondly, although the failure to submit the documents on which the Council intended to rely could be considered unreasonable, the appellant has nevertheless still been able to submit sufficient evidence to argue his case successfully without sight of the Council's original statement of case. He included much detailed evidence with his initial statement and responded to the limited additional documentation that was eventually put on file before the deadline for final comments expired.
7. He has not explained in any detail why the manner in which the appeal has been handled and the fact that some of the Council's evidence has been deemed inadmissible has caused him unnecessary or wasted expense; rather he seems more intent on holding the Council to account for its failure to meet the procedural deadlines in order to draw attention to these shortcomings.
8. The Council tried to rectify what seems to me to be a genuine mistake caused by a combination of unfortunate circumstances. In my view, this has been more disadvantageous to the Council than to the appellant. The appellant has had a full opportunity to put forward his case and the actions of the Council have not prolonged the appeal process or introduced additional matters at a late stage that could not have previously been anticipated. In any event, the costs regime is not intended to be punitive to the losing side and parties are generally expected to meet their own expenses in the course of an appeal.
9. Therefore, I find that it has not been demonstrated that unreasonable behaviour on the part of the Council has resulted in any unnecessary or wasted expense, as described in the Planning Practice Guidance.

Katie Peerless

INSPECTOR