



Costs Decision

Site visit made on 10 January 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2023

Costs applications in relation to Appeal Ref: APP/A2470/X/22/3295641, APP/A2470/C/22/3295642 and APP/A2470/C/22/3295643

Hazel Hill Farm Wing Road, Morcott, Rutland LE15 9DA

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Mr Paul Bird and Miss Louise Holland for a full award of costs against Rutland County Council.
 - The appeals were against the refusal of the Council to issue a certificate of lawful use or development for (1) the erection of a building and its subsequent change of use as a single dwellinghouse, (2) the conversion and change of use of an underground agricultural vegetable storage clamp to a basement for the dwellinghouse, (3) operational development comprising the installation of a septic tank and drainage system, and (4) the associated use of land as curtilage to the dwelling, and against an enforcement notice alleging the material change of use of the land, from agricultural use to a mixed use of agriculture and residential occupation, and the erection of a timber building.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. The applicant claims the respondent failed to carry out adequate investigations of the enforcement complaint, which led to delays in the determination of the lawful development certificate application and the issuing of the enforcement notice. Early discussion in the application process could have resolved concerns regarding whether the applicant had acted to deliberately deceive. There was no justification for the respondent to request that the appeals be dealt with at public inquiry. The applicant makes an application for a full award of costs on procedural grounds.
4. The PPG sets out a list of behaviours that could leave a local planning authority (LPA) at risk of an award of costs. The list is not exhaustive and identifies, amongst other things, lack of cooperation with the other party, and failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined.

5. The respondent did take action to investigate the enforcement complaint made in April 2017. Difficulties contacting the applicant were initially experienced due to correspondence being sent to an old postal address and officers being unable to access the site. It is unclear whether correspondence was or could have been sent to the site address. Contact was made with the applicant in August 2017 by telephone. The information provided by the appellant at that time could have been corroborated by a site visit. However, the respondent continued to monitor the situation, having regard to the applicant's claim of ill health arising from the ongoing enforcement investigation.
6. The LDC application was not dealt with within the statutory 8-week period, but an extension of that period was agreed. The respondent asserts that they did not canvas any further evidence and therefore had no need to revert to applicant. The legal advice sought and subsequently provided by counsel need not have been copied to the applicant. However, notifying the applicant of the respondent's intention to rely on positive deception to refuse the LDC, and providing an opportunity for them to make submissions on this matter would have been reasonable and fair.
7. The applicant addressed the matter of positive deception in their appeal submissions. This did not change the respondent's stance on the matter. It is therefore unlikely that the provision of the applicant's rebuttal on this issue before the respondent determined the LDC, would have changed the outcome. The LDC would still have been refused and an appeal would still have been necessary.
8. Whether it is expedient to take enforcement action is a matter for the Council. The notice was issued in short order after the LDC was refused, but this is not an unusual occurrence when development has already taken place. I appreciate that, as the respondent was relying on positive deception to set aside s171B, there was no specific date by which the notice had to be served. However, the unauthorised development had clearly been ongoing for some considerable time and bringing it to a timely conclusion would be in everyone's best interests.
9. The duty to determine the appeal procedure rests with the secretary of state, having regard to the views of the appellant, the local planning authority, the criteria for procedure determination and expert involvement (where relevant). In this case, the main appeal parties' views on procedure differed. Having regard to the criteria, The Planning Inspectorate initially confirmed that the procedure would follow the inquiry route as evidence could need to be tested through formal questioning by an advocate and evidence could need to be given on oath. The procedure was kept under review, and following written submissions, it was determined that the evidence was clear, including the areas of disagreement. The procedure was formally changed to written representations. This change of procedure was not a result of the respondent's actions.
10. The outcome of the enforcement appeals was for the notice to be quashed following my finding it invalid. The applicant had raised concerns regarding the content of the notice in their initial appeal submission. I shared those concerns and sought clarification before forming my decision. The allegation and reasons for issuing the notice were not clarified and I found the notice to be imprecise and ambiguous, leaving doubt as to what was being alleged. The notice could

not be corrected without causing injustice and was quashed, without the grounds of appeal being determined. The applicant was therefore put to the wasted and unnecessary expense of preparing and pursuing appeals on grounds (a), (f) and (g) of s174(2) of the 1990 Act. The ground (d) appeals case followed that of the LDC appeal, which was necessary.

11. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the enforcement appeals on grounds (a), (f) and (g) of s174(2) of the 1990 Act as amended and a partial award of costs is therefore warranted.

Costs Order

12. 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 Rutland County Council shall pay to Mr Paul Bird and Miss Louise Holland, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the grounds (a), (f) and (g) of s174(2) appeals; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The Applicant is now invited to submit to Rutland County 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M Madge

INSPECTOR