
Costs Decision

Site visit made on 16 February 2023

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Costs application in relation to Appeal Refs: APP/H1515/W/21/3284393 and APP/H1515/W/21/3284395

Land off Eagle Lane, Kelvedon Hatch, Brentwood, Essex CM15 0DH

- The application is 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 application is made Brentwood Borough Council for a full award of costs against Mr Tom Sweeney.
 - The appeals were against the Council's decision to 1) refuse the stationing of two caravans on the land for residential use; and 2) refuse planning permission for the erection of two dwellings on the land.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises 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.
3. The PPG says that appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process and, relevant to this application, not completing a timely statement of common ground, not agreeing factual matters common to witnesses of both principal parties, also failing to attend or to be represented at a site visit, hearing or inquiry without good reason.
4. In this instance the Hearing was scheduled to take place at 10am on Tuesday 11 October 2022. I have checked my e-mails which show that on the Monday morning, the day before, my case officer had immediately forwarded me an e-mail he had just received from a colleague of Mr Green (the appellant's agent) at 9.35am to say that he was too unwell to attend the Hearing, and are requesting that the hearing be postponed. Saying that he would not be capable of travelling to Essex on the Monday, let alone representing the client in a hearing (either in person or remotely) she also referred to the fact that he had been unwell the previous week and, as a result, a four day Planning Inquiry had had to be cancelled.
5. There quickly followed an e-mail from the Council, who had been notified of the situation, requesting confirmation that the Hearing would be cancelled, and at

- 9.52am I sent an e-mail to my case officer agreeing to the cancellation, and requesting that this be forwarded to both main parties.
6. In the event I realised that Mr Green was also scheduled to appear at a separate Hearing later in the week, on Thursday 13, and my case officer then similarly informed the agent's colleague that this would also be cancelled.
 7. I can appreciate the Council's frustration at the short notice given, and that consultants employed to assist the Council's case were already travelling for this purpose and hotel rooms had been booked. In this respect the agent's office, in responding to the costs claim, is incorrect in referring to these persons as 'the public'. That is not what the Council is saying.
 8. It would appear to me that, despite the previous week's cancellation, Mr Green had been hoping to have made a recovery to allow for his attendance but, despite the weekend break, he had realised on the Monday morning that this would not be possible. I find, therefore, that the situation was unfortunate but, given the circumstances, understandable.
 9. The Council's second ground on its application for an award of costs relates to the agent not responding to the Council's comments on the appellant's draft Statement of Common Ground, despite contact made by the Council in an effort to move things along. Again, I sympathise with the Council, but the case itself clearly showed that the 'facts' themselves were in dispute and there was a lot of distance between the two parties. Incidentally, when the agent did respond I note that some of the Council's comments had been deleted without explanation. This was neither helpful nor courteous but, that said, it was indicative of the degree of disagreement, and I interpreted it, accordingly.
 10. Moreover, it is not unusual for Statements of Common Ground to show little agreement between the parties and I am not convinced that the Council's case was compromised in the circumstances, irrespective of my decision to dismiss the appeals.
 11. I conclude, in the circumstances, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been fully demonstrated.
 12. I therefore refuse this application for an award of costs.

Timothy C King

INSPECTOR