



Costs Decision

Inquiry held on 8, 9 and 10 November 2022, 4, 5 and 6 July 2023

Site visits made on 10 November 2022 and 6 July 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Costs application in relation to Appeal Ref: APP/B1550/C/19/3237992

The Yard, Murrels Lane, Hockley, Essex, SS5 6AB

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rochford District Council for a full/partial award of costs against Mr Aarun Archer.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a material change of use to a mixed use of general industrial use and the siting of a mobile home for human habitation and the erection of a steel palisade fence and double gates with a barbed and razor wire top trim.
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Decision

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

The submissions for Rochford District Council

2. The costs application was submitted in writing. The Council seeks a partial award of costs but invites me to make a full award in the event that I consider it appropriate to do so on the basis that the appeal had no chance of success.
3. In terms of procedural unreasonableness the Council refer to the evidence submitted by Mr Archer (the appellant) and his engagement in the enforcement investigation and the effect this had on the duration of the Inquiry.
4. On a substantive basis the Council consider that the appellant acted unreasonably in terms of failing to identify a date on which the material change of use occurred and providing no analysis to the planning unit in the original Proof of Evidence. Further the Council considered that the appellant did not show a positive case for the development and that there were limitations in terms of evidence in relation to the best interest of the children and very special circumstances. It is the Council's view that the appellant submitted high volumes of irrelevant material.

The response by Mr Archer

5. The response was made in writing and addresses the points raised by the Council.

Final comments from the Council

6. The Council's final comments refer back to its original submissions and it does not raise any significant new points.

Reasons

7. 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.
8. In the context of an enforcement investigation there is no requirement for a planning application to be made or for a certificate of lawful use to be sought. There was reference at the Inquiry to a meeting which took place at the site prior to the enforcement notice being served. That meeting was attended by an agent acting for the appellant and on that basis, it is clear that he had taken steps to engage with the process.
9. PPG highlights that effective enforcement action relies on accurate information about an alleged breach of planning control and Councils have a range of investigative powers for planning enforcement purposes. These include the service of a Planning Contravention Notice, but the Council took the view following the meeting on site that this would be of little value.
10. The notice was issued on 28 August 2019 and the appeal was made in September 2019. In October 2019, information, which the Council held, was provided to the applicant about the site between 2009 and 2019. The Council makes a valid point that the appellant has not been forthcoming in terms of providing information in the appeal process.
11. The appellant's case was not fully made until the submission of Proofs of Evidence. However, there is no evidence that having received that information there has been any narrowing of the issues before the appeal. Consequently, even if there had been full disclosure by the appellant in response to the Council's request in October 2019 it is unlikely that this would have resulted in any reduction in the time spent by the Council in dealing with the appeal or preparing for the Inquiry.
12. In relation to the witness statements, whilst it was not ideal for them to have been signed at the Inquiry, there were no substantive changes to them, and the Council was able to prepare its case on the basis of the unsigned drafts.
13. Following the adjournment of the Inquiry in November 2022, it was reasonable for the appellant to produce a supplemental statement to respond to the matters which had been raised in evidence. Additional witness statements in support of the supplemental statement were necessary and reasonable. The Council was able to respond to these documents when the Inquiry resumed in July 2023.
14. It will be seen from my decision that I have taken the relevant date to establish immunity from enforcement action in respect of the change of use as being the date 10 years prior to the notice being issued. It was not necessary to establish the date when the material change of use first occurred in order to determine the appeal. Any gap in evidence prior to 28 August 2009 was not determinative.
15. The planning unit is generally the starting point for the consideration of whether or not a material change of use has occurred. Whilst the appellant did not address this in his submissions it is not a requirement of the appeal process that he does so. It is also not clear from the notice that the Council was concerned about any changes to the planning unit or units on the appeal site.

16. During the course of the Inquiry the issue of the planning unit became more relevant and a matter of dispute between the parties. This arose from the evidence provided to the Inquiry in the form of witness evidence given under cross examination and interpretation of the Certificates of Lawfulness (LDC) which were part of the planning history of the site.
17. There are errors in the appellant's submissions in respect of the description of development under the LDCs. However, the LDCs and their implications for the consideration of planning units were much more significant issues and in this context the errors were not material.
18. Both parties submitted additional evidence in relation to the LDCs and these documents were not before me as part of the original submissions. There were delays in the appeal process as a consequence, but I do not find that these delays were attributable to one of the parties in particular.
19. The appellant did not present a positive case for development in the Green Belt. Part of his case was that the development was not inappropriate, although it will be seen from my decision that I do not support his view. Had I have agreed with his approach then it would not have been necessary for me to go on to consider whether very special circumstances were present. This was an arguable point in the appeal.
20. The appellant considered alternatives to meet his family's need for residential accommodation. Although this could have been a more detailed assessment and was only in response to the Council's evidence, the approach was not unreasonable.
21. It will be seen from my decision that the best interests of the children were a key consideration and that there is a tension between the appellant's wish to remain on the site and the living conditions provided. In this scenario the appellant naturally submitted evidence which would support his case.
22. A number of the appeal and case law references submitted by the appellant are in respect of development for gypsies and travellers. Whilst it is clear from the appeal submissions that Mr Archer and his family are not gypsies or travellers, this information had a wider application.
23. The appellant is not arguing a fall-back position in respect of the use of the site as contributing towards 'very special circumstances'. As set out in my decision I have considered a fall-back in the context of the effect on openness. This is necessary given that the notice only requires the cessation of the residential use and the removal of the caravan.
24. The appellant referred to a number of matters as 'very special circumstances' which is entirely reasonable for appeals of this type. I have attributed weight to these matters in the Green Belt balance and considered their cumulative effect on that balance. It is not necessary for each matter to amount to a 'very special circumstance' in its own right.
25. Both the assessment of the appeal on ground (d) and the appeal on ground (a) required the weighing of evidence and matters of planning judgement. In that context I do not find the submissions by the appellant to comprise irrelevant material. Neither was the volume of material excessive given the level of complexity of the case.

26. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Sarah Dyer

INSPECTOR