



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 Mr Aarun Archer for a full/partial award of costs against Rochford District Council.
 - 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 by Mr Archer

2. The costs application was submitted in writing. The applicant seeks a full award of costs or in the alternative a partial award of costs.
3. The applicant considers that the alleged breach of planning control is clearly immune from enforcement action and that had adequate investigations been carried out there would have been no need for an enforcement notice.
4. In the alternative a partial award of costs is sought on the basis that the Council changed its position during the first sitting of the Inquiry. The applicant considers that arguments in respect of the planning unit/s should have been made in the notice or in the Statement of Case. He says that this would have given him the opportunity to address them without the need to call/recall witnesses or produce affidavits and proofs of evidence.

The response by the Council

5. The response was made in writing and addresses the points made by Mr Archer.

Final comments from Mr Archer

6. The applicant's final comments refer back to his original submissions and he 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. It will be seen from my decision that I have not found the breach of planning control which was identified by the Council to be immune from enforcement action. There is a lack of clarity around whether or not the applicant was invited to apply for a certificate for lawful use or development (LDC) when the site visit was carried out in advance of the service of the notice. However, in the light of my findings there is no certainty that such an application would have been successful either.
9. On the basis of the outcome of the appeal the Council's action in serving the enforcement notice was justified and necessary and it was not unreasonable for the Council to serve the notice.
10. In respect of the planning unit, detailed consideration of this matter arose as a consequence of information which was presented during the Inquiry. Both parties were aware of the 2001 and the 2002 LDCs but these documents were not submitted in evidence until the Inquiry had commenced. One occupier of the site also referred to 'keeping himself to himself'. Before this information was brought forward there was limited reference to the planning unit in the submissions by either party. To that extent the Council was reacting to information arising from cross examination of witnesses.
11. The Council had issued the 2001 and 2002 LDCs. It is reasonable to assume that if it considered that the site comprised two planning units on the basis of those decisions it would have referred to the changes to the planning units in its reasons for serving the notice. Notwithstanding the lack of co-operation which the Council cites in terms of obtaining information from the applicant, a more thorough investigation and interpretation of the planning history of the site could have led to the Council's position on the planning unit/s being clearer from the outset.
12. However, it was as a result of cross examination that also gave rise to questions regarding possible changes to the planning units on the site and the Council's view that the two planning units established by the LDCs still existed during the relevant period. It was necessary for me to adjourn the Inquiry to allow both parties to present their case in the light of the information which had come forward. It will be seen from my decision that I have addressed the matter of the relevant planning unit and I could not have done so without the additional submissions by both parties. For that reason I do not find that the Council has acted unreasonably.
13. 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