



Costs Decision

Inquiry Held on 12 and 13 December 2023

Site visit made on 13 December 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2024

Costs application in relation to Appeal Ref: APP/G2245/C/22/3302818 Part of land at Widhurst Farm, Shoreham Lane, Halstead, Kent TN14 7BY

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Sevenoaks District Council for a full or partial award of costs against Mr Jagir Singh.
 - The Inquiry was in connection with an appeal against the decision of the Council to issue an enforcement notice against an alleged material change of use of the land to a mixed use consisting of a builders yard premises for the processing of builders materials, storage and sales, residential use of mobile homes and caravans, parking, storage, repair, sale of motor vehicles, plant and other equipment.
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Decision

1. The application for a partial award of costs is allowed.

Preliminary matters

2. At the Inquiry an application for either a full, or partial award of costs was made by Sevenoaks District Council against Mr Jagir Singh. The appellant, in his response, accepted that the partial award of costs should go against them for wasted expenses arising from the appeals on grounds (a), (b) and (c). From all I have heard, I can see no reason to come to a different view and I shall award a partial award of costs relating to those grounds in any event. I shall therefore be focusing on the application for a full award of costs in this decision.

The submissions for the Council

3. The Council's case was set out in writing at the Inquiry. In short, the appellant's conduct, throughout this appeal, has led to the late submission of documents, notably their Statement of Case, late proofs of evidence from witnesses, and avoidable significant delays in the timing of the Inquiry.
4. The failure to submit a statement of case has resulted in the Council being forced to prepare their case largely 'in the dark' and without a full and proper understanding of the appellant's case. The late withdrawal of grounds (a) to (c) has meant that the Council has wasted time and expense in responding to those grounds of appeal.

The response by Mr Jagir Singh

5. The response was given orally at the Inquiry. In short, whilst accepting that the appellant is liable to a partial award of costs, the appellant's Agent was not instructed until 14 November 2023. Since then, the appellant has endeavoured to adhere to the later deadlines laid down by the Planning Inspectorate. Detailed evidence has been submitted to support the remaining grounds (d) and (e).

Reasons

6. Parties in planning appeals and other planning proceedings are normally expected to meet their own expenses. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, 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.
7. I acknowledge that the extremely late instruction of the appellant's agent, has resulted in a belated overview of their case and the need to prepare the missing documents quickly. Nonetheless, I share the Council's concerns that any shortcomings in the appellant's case could, and should, have been identified at a much earlier stage in the process. Indeed, there were at least three changes of Agents, which led to uncertainty and delays to all involved with this appeal. However, I also accept that the Council had the opportunity to consider and comment upon all of the appellant's evidence in advance of the Inquiry.
8. Furthermore, I do not consider that this could be described as a clear 'no hope' case. At the Inquiry and through his evidence, the appellant defended his position. He provided a number of photographs and a large number of witnesses. To my mind they provided evidence to support their case on both of the remaining grounds. Moreover, as the appellant proceeded with grounds (d) and (e) and the witness evidence related primarily to matters of fact, it needed to be tested by way of the Inquiry procedure. The Council have thus not incurred wasted expenses in this regard.
9. The difference of opinion over the way the notice was served and the precise use of the appeal site throughout the relevant period, is a fact and degree judgement.

Conclusion

10. With regard to the substantive matters before me, I conclude that the appellant was entitled to, and has, put forward his case to defend his position, on both grounds (d) and (e), such that a full award of costs is not justified. Consequently, I refuse to allow a full award of costs.

11. However, with regard to the procedural requirements of the appeal process, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated in this instance. Accordingly, I allow the application for a partial award of costs against the appellant.

Hilary Orr

INSPECTOR

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 the appellant shall pay to the Council the costs of the appeal proceedings described in the heading of this award, limited to those costs incurred in dealing with the appeal on ground (a), (b) and (c). Such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The Council is now invited to submit to the appellant, to whose agent a copy of this award has been sent, details of those costs with a view to reaching agreement as to the amount.

Hilary Orr

INSPECTOR