



Costs Decision

Hearing held on 9 January 2024

Site visit made on 10 January 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 March 2024

Costs application in relation to Appeal Ref: APP/E2205/C/22/3309329 Part of area of land known as land and buildings at Pett Farm, Pett Lane, Charing, Ashford, Kent TN27 0DS

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Boyd Roberts for a full award of costs against Ashford Borough Council.
 - The appeal was against an enforcement notice alleging that without planning permission, the erection of a building (including attached veranda and timber decking) ("the Building") used as a single dwelling house; and the carrying out of further facilitating operational development comprising the laying of a steel frame base with concrete sleepers; the formation of two brick pathways; the erection of a domestic greenhouse; the erection of a storage building; the erection of fencing along the south-west boundary and south-east boundary of the Land; and the introduction of various domestic paraphernalia, all associated with the unlawful residential use of the Building.
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Decision

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

The submissions for Mr. Boyd Roberts

2. The costs application was submitted in writing. The appellant's contention is that the Council did not apply the correct policies, they did not obtain expert input and if the drainage matter was checked then the authority would not have issued the Enforcement Notice (Notice).
3. The Planning Practice Guidance (PPG) states that examples of unreasonable behaviour by local planning authorities includes preventing a proposal which could reasonably have been permitted in the light of the development plan and all other material considerations.¹ The applicant's application for costs, in the main, rests on whether the Council has failed to have regard to its own adopted policies and other material considerations when making the decision to take action.

The response by Ashford Borough Council

4. The response was made in writing. It sets out that there is a misunderstanding in respect of the appeal. The Council maintain that as they considered the structure a building, rather than the approved temporary mobile home, no permission was granted for the building. The appellant never sought to regularise the building and, consequently, prior to the building becoming immune from enforcement action, formal action was pursued. There is no

¹ 049 Reference ID: 16-049-20140306

mechanism to place restrictive occupancy conditions on an enforcement action. Based on the information provided by the appellant as part of the appeal, and previous applications, they formed a position in respect of the ground (a) appeal, which is not unreasonable.

Reasons

5. Parties in planning appeals normally meet their own expenses. However, the 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. For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place or ensured that it was accurate.²
6. Firstly, it must be acknowledged that I am only able to consider the Council's actions in respect of the Enforcement Notice. Based on my conclusions on the accompanying Appeal Decision, I agree that the structure amounts to a building and not a mobile home. Consequently, regardless of the decision made on the acceptability of a mobile home in historical applications, the development carried out on site did not accord with these proposals and had no relevant planning permission.
7. Even though a condition to restrict the occupancy could be applied to a planning permission, this cannot be imposed as a requirement on an enforcement notice. As such, even though Mr Roberts is running a rural enterprise that I considered compliant with local and national policy, it still would have been necessary to pursue formal action. If the Council neglected to take action prior to the 4 year immunity period, the building and its use would have become lawful without a restrictive occupancy condition.
8. As such, regardless of the acceptability of the proposal, I do not consider the Council's decision to take action as unreasonable, mainly for the reasons set out above. However, I am also of the view that the need for the rural worker, the effect of the development on the AONB and the effect on Stodmarsh Lakes are subjective planning matters. As such, it is not unreasonable for the Council to come to a different conclusion on these matters. In any event, no additional landscape assessments or ecological assessments were submitted as part of the appellant's appeal, therefore, the appeal has not directly caused the applicant to incur unnecessary or wasted expense in the appeal process.
9. The appellant has concerns that the Council were following the superseded advice on rural enterprises in Planning Policy Statement 7, rather than the PPG when assessing its acceptability. Based on the evidence before me, the Council's Statement of Case, the Enforcement Report (appendix 8 of the Statement of Case) and Enforcement Notice does not refer to the superseded guidance. In light of this, there is no substantive evidence to support the applicant's position. I appreciate that the Council's decision would have been a disappointment to the applicant. Nevertheless, the Council had legitimate concerns about the development that justified their decision to take formal action, which is not a basis for unreasonable behaviour.

² 048 Reference ID: 16-048-20140306

10. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M. P. Howell

INSPECTOR