The Planning Inspectorate

Costs Decision

Site visit made on 23 January 2024

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2024

Costs application in relation to:
Appeal A: APP/T2215/C/23/3328149
Appeal B: APP/T2215/C/23/3328150
Land at St Marys Nursery, Birchwood Road, Wilmington, Kent, DA2 7HQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Balbir Singh Heer (St Mary's Development (Kent) Ltd) for a full award of costs against the Dartford Borough Council.
- The application is in connection with two appeals against enforcement notices alleging the material change of use of the Land for the storage and distribution of scaffolding, building materials and other associated materials.

Decision

1. The application is refused.

Reasons

2. The Planning Practice Guidance (PPG)[1] advises that irrespective of the outcome of an appeal, costs may only 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 application for costs and the arguments advanced for the applicant, and for the Council in response, are as set out in their detailed written submissions. As such, there is no need for me to repeat them in any detail here.

4. The applicant seeks an award on procedural grounds on the basis that the Council failed to disclose the existence of an effective enforcement notice issued in 2007, which prohibited use of scaffolding (I return to this point later). As such, had the applicant's planning consultant known of the existence of the 2007 notice, it is said he would have advised his clients differently in respect of their occupation and use of the land so that there would have been no need to issue the two notices subject of the related appeals.

5. Notwithstanding any perceived failure or miscommunication with the Council's Land Charges function, Local Planning Authorities are required by section 188 of the Act to maintain full details of all issued enforcement notices in a register[2] and, by s188(3), that the register be kept available for inspection by the public at all reasonable hours. Additionally, Article 43(5) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires

[1] Paragraph 030 ref: 16-030-20140306
[2] Register of enforcement and stop notices and other enforcement action

that every register must include an index for enabling a person to trace any entry in the register by reference to the address of the land to which the notice relates.

6. Given the foregoing, the full details of the 2007 notice should have been available for inspection in the Council's register. However, from the parties' submissions it is unclear to me whether the Council is up to date in maintaining its register as required, and/or whether the applicant's professional advisor attempted to carry out any search of the register. Neither party has provided a copy of the 2007 enforcement notice.

7. The above aside, the breach alleged in the 2007 notice, as described in the Council's expediency report, states: *"Material change of use to a mixed-use of garden centre and sale of motor vehicles operation of scaffold business storage of cabling snack bar caravan erection of fencing".* Clearly, the deemed application for planning permission flowing from that alleged **single mixed use** is significantly different from just use as a "scaffolding yard", and also significantly different from the single mixed use alleged (and deemed planning application) in the current notices.

8. Consequently, in terms of whether, prior to issuing the current enforcement notices, there was unreasonable behaviour resulting in unnecessary expense, there is no convincing evidence before me to indicate that had the applicant known of the 2007 notice it would have necessarily resulted in any different advice or outcome.

Conclusion

9. For all these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Thomas Shields

INSPECTOR