



Costs Decisions

Site visit made on 26 February 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2024

Costs applications in relation to Appeal Refs: APP/Y9507/C/23/3323818, APP/Y9507/W/23/3322763, APP/Y9507/W/22/3312458, APP/Y9507/W/23/3328911

Land West of The Drove, Ditchling, East Sussex

- The applications are 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 applications are made by Mr Conrad Howard for a full award of costs against South Downs National Park Authority.
 - The appeal was against an enforcement notice alleging the material change of use of land from agriculture to camping and leisure in excess of a permitted development right as well as appeals in respect of use of land as a camp site.
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Decisions

1. The applications for an award of costs are refused.

Reasons

2. The Planning Practice Guidance 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.
3. The applicant contends that there has not been adequate prior investigation undertaken by the Authority and refers to earlier correspondence with them concerning structures that were on the land and operations taking place that were asserted to be permitted development. It is contended that the mere presence of structures does not amount to evidence of actual use.
4. It is also contended that the camp site was not open when the enforcement notice was issued, and so there were no reasonable grounds for it to be issued.
5. The Authority also did not submit an appeal statement which suggests they are fully aware the notice was issued incorrectly, and the applicant is therefore also unable to ascertain what the Authority considers to be enforceable.
6. The applicant further highlights that an Authority is at risk of an award of costs if they fail to determine a planning application, prevent development that should clearly be permitted, act contrary to well established case law and not determine similar cases in a consistent manner, amongst other things. An Authority should approach decisions on development in a positive and creative way and not add to developments costs through avoidable delay.
7. The Authority should also have been aware of pending changes to permitted development rights. Reasons for refusal also related to existing structures that

- were not related to the camping use and it was confirmed that no residual camping equipment is kept on the site.
8. There are then no records of complaints about alleged noise disturbances and the Environmental Health Officer did not comment on the applications. It is already an area of poor tranquillity. Camp site users describe it as relaxing and quiet.
 9. The Authority has rejected clear and unequivocal evidence relating to the existing structures, residual camping equipment, noise disturbance and traffic. Section 38(6) of the Act is engaged as the proposals are in accordance with the development plan.
 10. The applicant therefore seeks a full award of costs in respect of the enforcement and planning appeals because the Authority has put the applicant through the unnecessary costs of the appeal process.
 11. The Authority has not provided a response to the applications.
 12. I have treated the applicant's cost applications as being in relation to all the appeals before me, seeking full costs on various substantive and procedural basis.
 13. I have already found that it was not necessary for the camp site to be open when the enforcement notice was issued, for the reasons given in my corresponding decision. Whilst I have corrected the requirements of the notice, even prior to this, it only required the removal of tents and supporting infrastructure and paraphernalia associated with the camping and leisure use. It therefore did not require the removal of other structures or operations that may or may not have taken place on the land using permitted development rights.
 14. There is then very little evidence to demonstrate that adequate prior investigation was not undertaken by the Authority, particularly when it only has to appear to them that there has been a breach of planning control. It was therefore not unreasonable for the Authority to have issued an enforcement notice.
 15. Whilst it might have been helpful for the Authority to have submitted a more detailed appeal statement or statements given the number of linked appeals, there was nevertheless a statement, delegated report, officer report and list of suggested conditions before me, and therefore it was not unreasonable.
 16. It is apparent from the requirements of the notice what is required to be done to remedy the breach and the onus was otherwise on the applicant to demonstrate what was not enforceable. I do not accept that any supposed absence of an appeal statement suggests the Authority was aware the notice was issued incorrectly. Indeed, I have found this to not be the case.
 17. There is then very little evidence that the Authority has prevented development that should have clearly been permitted, has been inconsistent or acted contrary to case law. The reasons for issuing the notice and refusals of planning permission were matters of planning judgement, which, despite the existence of a permitted development right, the Authority exercised reasonably based upon the evidence before it. It therefore did not delay development.

18. Whilst there was an appeal against non-determination, given the enforcement notice and refusals of planning permission, it was inevitable there were always going to be appeals. Given the non-determination was linked with these, and raised the same issues, I am not persuaded there has been unnecessary or wasted expense incurred.
19. Whilst Section 38(6) of the Act might be engaged in development proposals, the Authority gave cogent reasons as to why the proposals contravened the development plan, despite the existence of a permitted development right for a camping use.

Conclusion

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

Paul T Hocking

INSPECTOR