



Costs Decision

Inquiry held on 16, 17 & 19 April 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th May 2024

Costs application in relation to

Appeal A Ref: APP/P0240/C/22/3299695

Appeal B Ref: APP/P0240/C/22/3299696

Land east of Warren Farm, Woburn Road, Millbrook, Bedford, Bedfordshire, MK45 2HY

- 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 Rye Demolition Limited and Rye Plant Hire Limited for a full award of costs against Central Bedfordshire Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a material change of use of land to storage and vehicle recovery and associated operational development.
-

Decision

1. The applications for an award of costs under Appeals A and B are refused.

The combined submissions for Rye Demolition Limited and Rye Plant Hire Limited

2. The costs application was submitted in writing. It claimed that the Council's service of the Notice was misplaced based on the planning history of the site, the initial evidence provided by the appellants, and the site circumstances since the service of the Notice.
3. The following points were reiterated and additionally made orally: that the Council was unjustified in serving the Notice which is relevant to the costs application; the Council's absence of comparison to a former use undermines a threshold test for service of the Notice and its defence in the appeal; no review of the Notice took place prior to the Inquiry; defence of the Notice should be based on a witnesses own assessment, first hand observation and on the application of due diligence; and, following the applicants' cases on ground (c) and (d), non-withdrawal of the Notice has resulted in wasted time in the appeal and incurred associated costs.

The response by Central Bedfordshire Council

4. The response was made orally at the Inquiry. It highlighted that matters prior to the service of the Notice and the expediency to serve it lie outside the scope of the Inspector's considerations in the appeal. This includes the lawful status of the Council's decision on an application (ref. CB/13/04251/LDCE) for a Lawful Development Certificate for an existing use in 2013 (the 2013 LDC).
5. It is the Council's position that it was entirely reasonable for its witness to rely on paperwork and evidence collected during the investigation prior to the service of the Notice and that changes made on the site since are irrelevant to

the allegation in the Notice. If the applicants saw different to the alleged development, they did not challenge the allegation in the Notice.

6. It was also the Council's position that the applicants' approach had sought to reverse the burden of proof towards the Council. In having to respond to the applicants' subsequent evolving evidence at the Inquiry, the Council has not behaved unreasonably.
7. It was asserted that no detail of wasted expense was claimed by the applicants.

Reasons

8. Parties in planning appeals normally meet their own expenses. However, 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.
9. It is the applicants' position that the Council's determination of an application for the 2013 LDC was procedurally and substantively flawed. In relying upon it, the applicants contend that the Council failed to suitably review and assess the enforcement matter with due diligence and thereby failed the test in s172(1) of the Act. The appellants contend that a lack of assessment against an unspecified original use of the Land cannot result in an allegation of a material change of its use.
10. It is not for me to review the status of historic decisions made by the Council. If the Council erred in its formal decision in the issue of the LDC in 2013, any challenge to that is by other routes. Although potentially of relevance, the 2013 LDC covers only land outside of the relevant planning unit and is merely confirmation that the use, as applied for, was lawful on the date of that application. It says nothing of subsequent changes to the planning unit nor uses taking place on the Land subject of the Notice.
11. Regardless, the Council's starting point set out¹ that the site was an open grassed area with no planning history and no indication (from aerial photography) that storage was taking place there. From that baseline, which need not be explicitly referred to in the Notice, the Council only need to be satisfied that a material change of the land *appeared*² to have taken place. From thereon, after the service of the Notice, the burden of proof as to any lawful planning status lies entirely with the applicants. Although the evidence caused me to find that the Council's description of that change was misplaced, it was neither an illogical nor unreasonable conclusion on the part of the Council.
12. The applicants were critical of the Council in not providing extended detail on their cases under grounds (c) and (d) in the appeal. Of their own accord, they invited a further rebuttal statement from the Council. The statement subsequently sought to address the applicants' scenario of an established site storage use and the extent to which structures might be considered incidental storage as opposed to operational development.

¹ Para. 4.20 of Proof of Evidence of Rebecca Rousell

² s172(1) of the Act

13. As matters of fact and degree, those assessments prior to the verbal evidence of the applicants' witnesses (who detailed claims made in relation to the historic use of the Land and use of structures), were not unreasonable. On the legal grounds of appeal, it cannot be that Councils should be required to pre-empt possible claims. Nor should they be prevented from responding to new evidence submitted at an inquiry.
14. A review of the site after a period of 2 years since the Notice was served may, indeed, have witnessed a change in the use of the site. However, the contested Notice relates to alleged uses taking place on the date on which it is served. In that context, the Council's reliance on case file notes, photos and the site planning history was legitimate, particularly given the original investigating officer was no longer employed there. Given that that position was set out in the Council's witness proofs, any frustration arising from the Council's witness' lack of ability to offer first hand evidence or succinct views from the time of the investigation or when the Notice was served, should not be considered tantamount to unreasonable behaviour. Moreover, it does not shift the burden of proof.
15. The applicants suggest that the Council changed its position during the course of the Inquiry on their confirmation that the use alleged in the Notice was a mixed use of the Land. However, sections 3, 4 and 5(1) of the Notice distinctly refer to 2 uses taking place. Although reference to a mixed use does not appear in the Notice nor the cases presented by the parties, as vehicle recovery is not typically a function of either general storage, demolition, construction or plant hire, I find there is sufficient reason to justify the stance taken by the Council. I cannot conclude that reference to a mixed use is unreasonable behaviour given the allegation in the Notice.
16. The fact that the Council's case covered a ground (a) appeal after its withdrawal is not, in my view, tantamount to unreasonable behaviour. In the event, it remained of relevance due to the applicants' partial reinstatement of the appeal on that ground.
17. Although I have subsequently quashed the Notice, it is not for the reasons the applicants' concern themselves with in their application for costs. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

R Hitchcock

INSPECTOR