



Costs Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 28th May 2024

**Costs application in relation to Appeal Ref: APP/X1545/C/22/3312131
The Lakes, Hall Road/Battle Rise, Heybridge, Essex, CM9 4PH (also known
as Gravel Pits) ("The Land"), shown edged in red on the plan attached to
the notice (Annex 1).**

- 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 James Purdy (J & R Construction Services Ltd) for a full award of costs against Maldon District Council.
 - The appeal was against an enforcement notice alleging the unauthorised use of lakes for informal recreational fishing purposes.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural Matter

2. The Council (respondent) did not provide any comments in response or rebuttal to the applicant's claim for costs.

Reasons

3. The Planning Practice Guidance (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.
4. The PPG is explicit that, 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 accurate¹.
5. The applicant makes the point in his appeal statement that the notice was issued "unexpectedly without warning or discussion with the Appellant". I have seen no evidence to the contrary, and the Council has not rebutted that assertion. There seems therefore to have been very limited or no engagement with the applicant to inform the investigation in advance of the enforcement action. There was, for instance, no Planning Contravention Notice (PCN) issued so as to better inform the Council's decision as to whether enforcement action should – and could – be taken as regards the use of the land (given that I have found in my Appeal Decision that the use of the lakes for informal recreational fishing purposes had acquired immunity by virtue of time). While not compulsory, the lack of a PCN exacerbated in my view the Council's insufficient consideration of the immunity issue.

¹ Paragraph: 048 Reference ID: 16-048-20140306

6. That inadequate consideration also appears not to have properly taken into account everything relevant the Council already knew about the planning history of the site. For instance, it is clear from the documentary evidence provided by the applicant during his appeal (which is likely to have been afforded to the Council in advance of the enforcement action had prior engagement occurred) that the Council had met with the previous owner and had apparently accepted that the land had been used for fishing for some time² (correspondence from 2012/13 refers, with a note that it was likely to continue). Yet there is no reference to these relevant matters in the 'Officer's memo for enforcement action' (OMEA) which recommended the enforcement action.
7. Notably, the OMEA did refer to "various and sustained complaints from local residents over a number of years of the alleged unregulated use of the site for fishing purposes amounting to a material change of use". However, without much ado it sets out a conclusion that the reported activities *could* have amounted to permitted development by virtue of a temporary change of use of land for not more than 28 days in total in any calendar year. But – as in the appeal – there was no substantive explanation or evidence in support of that rather vague but important assessment. In the circumstances it is not unreasonable to conclude that the enforcement investigation was not sufficiently diligent to support the issue of a notice, and that the applicant has been put to unnecessary costs in making an appeal against it.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

9. 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 Maldon District Council shall pay to Mr James Purdy (J & R Construction Services Ltd), the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Maldon District Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR

² "many years", as minuted by the landowner's solicitors under cover of letter dated 5 September 2012.