



Costs Decision

Inquiry held on 20 and 26 June 2024

Site visit made on 20 June 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2024

Costs application in relation to:

Appeal A Ref: APP/X1545/C/22/3305559

Appeal B Ref: APP/X1545/C/22/3305560

Reddings Farm, Reddings Lane, Tillingham, Essex CM0 7NX

- 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 Maldon District Council for a full award of costs against Mr A Skeggs (Appeal A) and Mrs J Skeggs (Appeal B).
 - The inquiry was in connection with appeals against an enforcement notice alleging the unauthorised change of use of 'The Land' to a B2 commercial machinery repair and maintenance workshop and associated activity of vehicle movement, parking, and external storage.
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Decision

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

Reasons

2. 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.
3. The applicant submitted its costs application in writing before the Inquiry. An addendum to the application was made in writing before the second day of the Inquiry. The appellants provided their response in writing. The application is for a full award of costs on substantive and procedural grounds.
4. In summary, it is claimed that the appeal had no reasonable prospect of success because the appellants failed to provide evidence of the continuity of the use of the land as stated in the notice prior to the opening of the Inquiry, and because neither of the appellants presented evidence themselves to the Inquiry. Procedurally, it is claimed that: the appellants failed to specify any positive case as to the date the material change of use took place and the chronology of the use of the land; the appellants provided the proof of evidence of their witness late, in breach of the Inquiries Procedure Rules¹; the appellants' witness introduced new evidence orally; and that the appellants failed to provide a draft statement of common ground (SoCG) when making the appeal and subsequently failed to agree amendments to a draft SoCG provided at a later stage. It is claimed that the appellants' unreasonable behaviour contributed to the Inquiry overrunning into the second day.

¹ The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (as amended)

5. There is no dispute that a Statement of Case was submitted by the appellants when it was envisaged that the appeals would follow the written representations procedure. The appeals subsequently followed the Inquiry procedure, and a timetable was set for the submission of proofs of evidence. The appellants provided the same documents and confirmed more than 4 weeks before the eventual date of the Inquiry that those documents would form the proof of evidence for Peter Le Grys.
6. Mr Le Grys provided additional information relating to the specific dates he had visited the appeal site as part of his oral evidence. However, that additional information was limited and did not lead to significant additional time being required for his evidence-in-chief or re-examination. The outcome of the appeal did not turn on the additional information.
7. In addition, the oral evidence of Mr Le Grys, the appellants' sole witness, took up only a modest proportion of Inquiry time. As such, the additional information did not contribute in any meaningful way to the event overrunning. The number of unexpected independent witnesses was the main reason the event needed to be adjourned until the second day.
8. The appellants were not compelled to provide evidence themselves. It was not unreasonable for them to rely on the evidence of Mr Le Grys. It is also not the case that the appeals stood no reasonable chance of success, based on that evidence alone. I have found the oral evidence provided by interested parties to be the most valuable evidence in these appeals, but that relies on it being consistent with how Mr Le Grys described the land being used since January 2012.
9. I remain unaware of exactly when the land first began to be used as stated in the notice. However, the date of commencement was not determinative of the main issue. This is because the evidence confirms, overall and on the balance of probabilities, that the use of the land as stated in the notice had been consistent for more than 10 years before enforcement action was taken.
10. A draft SoCG was submitted by the appellants when the original Inquiry date was postponed. Another copy accompanied the Proof of Evidence of Mr Le Grys. It was basic and not agreed by the applicant, who made amendments. The appellants did not agree to the amendments. It was open to the applicant to simply delete the parts of the draft SoCG it did not agree with, rather than add further text. Although a comprehensive SoCG would have been helpful, the appellants made reasonable attempts to agree a SoCG. It was not unreasonable for the appellants to disagree with the applicant's additional text.
11. In conclusion, I do not find unreasonable behaviour by the appellants in the appeal process. They failed to comply with Rule 14 of the Inquiries Procedure Rules, but there were unavoidable postponements to the opening of the Inquiry and a Proof of Evidence was provided more than 4 weeks before the Inquiry opened. In any case, there is no evidence that the applicant has incurred any unnecessary or wasted expense as a result of the claimed unreasonable behaviour of the appellants.
12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

L Douglas

INSPECTOR