



Costs Decision

Hearing held on 16 July 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Costs application in relation to Appeal Ref: APP/X1545/C/23/3319780 Land Adjoining Longfield, Hyde Chase, Woodham Mortimer, Maldon, Essex, CM9 6TN

- 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 John Smith for a partial award of costs against Maldon District Council.
 - The appeal was against an enforcement notice alleging the material change of use of the Land to use for the stationing of caravans for residential purposes.
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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 (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.
3. Firstly, the appellant seeks all of the costs of the appeal except for the cost of producing the Preliminary Ecological Appraisal Report, which he accepts would have been required in any case. In the alternative, he seeks the costs of producing the Hearing Statement on Highway Matters, which he now considers to have been entirely unnecessary.
4. The first claim is made by reference to paragraph 49 of the Planning Practice Guidance (PPG) which sets out examples of behaviour by local planning authorities that might give rise to a substantive award of costs. Primarily it is submitted that it should have been obvious to the Council at the outset that the development was in line with the development plan. This is essentially an argument that the enforcement notice should not have been issued in the first place. However, whether or not it is expedient to issue a notice is not a matter for consideration by an inspector in the context of an appeal against the notice. Having said that, it is hardly surprising that the notice was issued, accompanied by a Stop Notice, in circumstances where further acts of development had been carried out while the site was the subject of a Temporary Stop Notice, notwithstanding that the Council had been advised that a retrospective planning application would be forthcoming.
5. Reference is then made to the Officer Report recommending issuing the notice, and to the notice itself. It is claimed that neither document stated that planning permission should not be granted, but could be interpreted as saying that the

development needed to be made subject to appropriate conditions in order to be acceptable.

6. Both documents did allude to the prospect of a grant of permission, but both were clear that the initial assessment was that the development was contrary to the development plan as it stood, identifying the relevant policies. Where a party undertakes development in advance of preparing a planning application, the possibility of enforcement action is a risk that they take and it is not incumbent on the local planning authority in the face of continuing acts of development to await a full planning application.
7. In those circumstances, while the notice could, and probably should, have been more specific about the identified harm, the reasons for issuing the notice did identify the relevant policies as required. The appellant would accordingly have been aware of the matters that needed to be addressed in the deemed planning application. I am satisfied that the Council subsequently responded reasonably to the application and supporting documents narrowing its objections to matters concerning the suitability of the location and the effect of local character. These were not matters which it considered capable of being satisfactorily mitigated by conditions and so the appeal hearing was necessary. So far as the ecological and highways matters were concerned, the Council assessed these appropriately and withdrew its objections in good time.
8. So far as the need for the highways report is concerned, at the point of issuing the notice I do not consider it essential that the Council crystallise its concerns. It is sufficient in my view to have reasonable cause for concern about the potential highways and access impacts. If, as the appellant insists, it would have been obvious that there were no material concerns in that respect then there would have been no need to commission a report from a highways specialist. It was not unnecessary expense caused by unreasonable behaviour on the part of the Council.
9. Overall, I do not consider that the Council's actions in issuing the notice and subsequently defending its position at appeal could be characterised as preventing or delaying development which should clearly be permitted. While I did not ultimately agree with it on the main issues, I am satisfied that the appeal hearing was necessary and that the Council did not behave unreasonably, or indeed cause unnecessary or wasted expense. The application is refused accordingly.

Paul Dignan

INSPECTOR