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## Costs Decision

Hearing Held on 6 August 2024

Site visit made on 7 August 2024

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 September 2024**

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**Costs application in relation to Appeal Ref: APP/C1435/X/23/3314606**

**Ironside, Flitterbrook Lane, Rushlake Green, Heathfield, East Sussex, UK  
TN21 9QH**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Andrew Long for a full award of costs against Wealden District Council.
  - The hearing was in connection with an appeal against the refusal of a certificate of lawful use or development for the part residential use and occupation of the land.
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### Decision

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

### The submissions for the applicant

2. The costs application was submitted in writing at the Hearing. In summary, the applicant claims that the Council acted unreasonably which resulted in wasted expense by:
  - a) deliberately misconstruing the nature of the application, which was for part residential use and occupation of the land. Instead, they determined it based on use of the land for siting of mobile units for residential occupation.
  - b) deliberately ignoring significant evidence and facts submitted with the application. In particular the Council ignored the outcome of the planning Inquiry in 2000 and the resulting corrected enforcement notice which rendered residential use permissible on the whole of Ironside land.
  - c) unlawfully attempting to force the applicant from residing on the land after my LDC application had been submitted but before the application had been determined by threatening high court action if he did not cease residential occupation of my land.
  - d) failing to carefully consider the wealth of independent and objective evidence submitted with the application demonstrating continuous residency of the land for a period in excess of 10 years. Instead, they placed a greater weight than was reasonably warranted on cryptic internal notes made by

officers who did not make detailed observations on the nature of the activities on the site.

### **The response by Wealden District Council**

3. The response was submitted in writing at the Hearing and the application is resisted. The Council states that:
  - a) They did not misconstrue the nature of the application for part residential use. The appellant has referred to residing in mobile units as claimed residential use and occupation – the coach, the Brockhouse, the dwelling constructed as a caravan but considered to be operational development. The Council was not unreasonable to refer the mobile units that the appellant has himself referred to.
  - b) They did not deliberately ignore evidence submitted with the application. The officer report sets out a synopsis of the evidence. The Council's assessment was that at the time a valid application was made, it was material that the applicant was residing in a building. In the Council's view this was material change. The Council does not agree that the 2000 enforcement appeal decision make residential use lawful across the whole of Allis Farm including Ironside land.
  - c) The high court action threat was an enforcement issue separate to the LDC sought for part residential use of land.
  - d) The Council did not place undue weight on information that the Council held. The Council considered all evidence including that from the appellant and it was not unreasonable to cross reference information within the Council's possession.
  - e) The Council considered objectively the evidence. The onus is on the applicant to produce evidence for their case. All evidence was assessed. The Council considered that it had sufficient evidence to the contrary to refuse the application for a certificate.

### **Reasons**

4. 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. An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
5. There is nothing before me to suggest that the Council misconstrued the nature of the application which was for part residential use and occupation (as stated in the Council's Decision Letter), and the Council were not unreasonable to refer to mobile units of accommodation, which the appellant had himself referred to.
6. The potential for High Court action, relates to a previous enforcement case, and is not a matter for me to consider.
7. There is nothing to suggest that the Council deliberately ignored significant evidence and facts. Indeed, both the Officer's Report and Council's appeal statement sets out the Council's main concerns regarding the application and

summarises the evidence which was before the Council when they made their decision. Page 3 of the officer's report sets out what the Council considered are the lawful uses of the land, and the Council have also explained within their statement that they do not consider that the 2000 appeal decision made residential use lawful across the whole of Allis farm including the land known as Ironside. Based on all of the evidence submitted, I also agree with the Council on this matter.

8. As with all LDC applications, the onus is on the applicant to produce evidence to support their case. Indeed, it will be seen from my decision, that I have found that the appellant has failed to discharge the burden on him to show on the balance of probability that the use of the site changed to part residential on or before 18 March 2011, such that the refusal of the LDC was well-founded.
9. It follows I am satisfied that the Council has not acted unreasonably by the refusal of the LDC application. Therefore, the applicant has not been put to any unnecessary or wasted expense with dealing with this appeal.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the applicant's claim for costs fails.

*R Satheesan*

INSPECTOR