



Costs Decision

Hearing Held on 12 September 2024

Site visit made on 12 September 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2024

Costs application in relation to Appeal Refs: APP/L3815/C/24/3340948, APP/L3815/X/23/3316710

Land at Loxwood Farm, Brewhurst Lane, Loxwood, West Sussex RH14 0RJ

- 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 William MacGeagh for a full award of costs against Chichester District Council.
 - The hearing was in connection with an appeal against an enforcement notice alleging the unauthorised residential use of land and a certificate of lawfulness relating to a residential use.
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Decision

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

Reasons

2. 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.

Applicant's case

3. The thrust of the application is that the Council has failed to produce evidence to substantiate their reasons on appeal and made generalised or inaccurate assertions in the Officer's report which are unsupported by any objective analysis. It was not unbiased or undertaken in a professional manner. The Council has also not adopted a helpful or conciliatory approach, not responded to correspondence, and has failed to agree factual matters and act consistently in its determination with similar applications. A site visit was not undertaken and therefore the evidence and planning unit could not be properly understood.
4. The Council then did not review its case promptly following the lodging of the appeals, or withdraw, and instead issued an enforcement notice on a small part of the land when the lawfulness of that area, and the wider area, was shortly going to be determined at appeal.
5. The application for costs is made on a procedural and substantive basis.

Council's response

6. The Council's response is that it determined the appeal application within the statutory period, and detailed information had already been submitted. The Officer's report then sets out the information pertinent to forming the decision, including regard to relevant case law. The Council fully assessed all the evidence. A difference of opinion does not constitute unreasonable behaviour.

7. The Council had sufficiently set out its case in its appeal statement. A draft statement of common ground was then returned, and the applicant did not provide a further response.
8. The Council considers that it undertook adequate investigation. Whilst a site visit was not undertaken, this was because it was considered that information in its records, aerial images and that submitted with the appeal application was sufficient to make an informed assessment.
9. The enforcement notice identified harm and the steps required were a proportionate response. It was thus necessary and expedient to issue a notice. This led to a joint appeal and so it is unclear how additional expense arises for the applicant. It is also good practice to issue a notice in a timely manner. The Council also did not request a Hearing, as it considered the matters could have been dealt with by written representations.

Inspector's reasoning

10. In my view, it is plain the onus is on the applicant in matters such as this. It is therefore for the applicant to have submitted the necessary evidence and not try to insist on extensions of time or submit further evidence. I am then not persuaded that the delegated report was biased or unprofessional and it was accepted during the Hearing that the case law and other decisions only highlighted basic legal parameters. The Council also did not have to automatically accept the thrust of the applicant's evidence if it did not consider it amounted to a lawful residential use. That indeed was the position and case of the Council.
11. Whilst it would have been prudent for a site visit to have been undertaken, in this case it was highly unlikely that it would have changed the Council's decision, given what I observed during my site visit. It therefore did not lead to a fundamental failure to understand the activities being undertaken on the land. It was then not necessary for the Council to inspect the entire site for the purposes of issuing the enforcement notice given its position in respect of the appeal application, and the Council gave its view concerning the planning unit clearly during the Hearing. There was accordingly not professional negligence and a site visit following the lodging of the appeals is not a requirement.
12. The Council has therefore not behaved unreasonably and did not have to present full and detailed evidence to support their case, as again the onus was firmly on the applicant to do so. I am also not persuaded that the Council made substantively inaccurate assertions or should have reviewed their case with a view to withdrawing it.
13. It therefore seems to me that an appeal was inevitable irrespective as to whether the Council responded to correspondence, as this was not going to change the opposing position of the parties. It was then entirely reasonable to issue an enforcement notice, with reasons given, so that all matters could be dealt with during a single Hearing expeditiously.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR