The Planning Inspectorate

Costs Decisions

Hearing held and site visit made on 6 August 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH OCTOBER 2024

Costs application in relation to Appeal Ref: APP/M1710/C/24/3341888
Land at Riverside Paddocks, New Inn Fields, Sleaford, Bordon GU35 9LH

- 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).
- **Application A** is made by Ms Penny Amer for a full award of costs against East Hampshire District Council.
- **Application B** is made by East Hampshire District Council for a full award of costs against Ms Penny Amer.
- The appeal was against an enforcement notice alleging that without planning permission and within the last 10 years, the material change of use of land to a B8 business use for the storage of builder's materials and equipment (reclamation tiles and bricks and other materials)

Application A

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

Application B

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

Application A

The submissions for Ms Penny Amer

3. Costs Application A was made orally at the hearing. The applicant set out the following points.

4. The applicant claims that the Council had an open line of dialog with their agent but following initial correspondence, there was no further contact from the Council until they served the Enforcement Notice (Notice). It is claimed that the initial materials that were left on the land by unknown persons were removed and all that remained were materials used in conjunction with the primary use of the land for agriculture. Accordingly, a section 215 notice, which relates to untidy land would have better dealt with the issue.

5. The applicant says she was not made aware of the Council's decision to take action, and outlines concern over the fact that the expediency report was agreed on the same day the Notice was issued. The applicant also claims that there was no evidence produced to show the business use for the storage of builder's materials and equipment was occurring on the land. Also the requirements to remove the container, building and static caravan were excessive.

The response by East Hampshire District Council

6. The response was made orally at the hearing. The Council set out the following points.

7. The Council contend the applicant has failed to produce evidence of unreasonable behaviour. The Council claim the change of use had taken place and despite correspondence where the applicant agreed to remove the materials, the materials increased between the initial visit and the date the Notice was issued. It is also claimed that the link between the appellant and her partner, who specialised in the trade of reclaimed materials, was sufficient to demonstrate the alleged business use.

8. The appropriate authorisation was sought and granted to take formal enforcement action by way of a Notice to remedy the breach of planning control. The Council considered that it was expedient to take enforcement action for the reasons set out on the Notice and to maintain public confidence in the planning system in line with paragraph 59 of the National Planning Policy Framework (the Framework).

Reasons

9. The PPG specifically indicates 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 accurate.[1]

10. Based on the evidence before me, the Council made the applicant aware of the complaint and the breach of planning control. Despite indicating the matter would be resolved within a short period of time, the breach was still occurring following an extensive voluntary period of a year and three months. In all enforcement cases better communication could help to resolve matters voluntarily, but in this instance, the investigation was sufficiently diligent, and the Council allowed more than enough time to resolve the breach. Although a section 215 notice could have helped in terms of the appearance of the land, it would not have remedied the breach of planning control.

11. It is reasonable for the applicant to suggest that the requirements of the Notice could have been more accurate. However, despite my conclusions in respect to the ground (f) appeal on the accompanying decision, it is not unreasonable for the Council to have formed a different view on these matters. Further to this, the appellant's agent indicated at the hearing that even if the Notice did not include the requirements to remove the building, container and caravan, the applicant would still have appealed against the claims of the business storage use. Accordingly, a more diligent investigation and accurate notice would not have avoided the appeal against the Notice.

Conclusion on Application A

12. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense at the appeal has not occurred and an award of costs is not warranted.

<u>Application B</u>

The submissions for East Hampshire District Council

13. Costs Application B was made orally at the hearing. The following points were made orally.

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

14. The Council's claim for an award of costs is due to the substance of the appeal. Specifically, the Council claim that the appellant did not provide sufficient information to substantiate the claim that the land was being used for agriculture and the storage of materials was not a business use. The submissions resulted in an appeal hearing having to be conducted and the Council appointing a legal representative to attend the event.

The response by Ms Penny Amer

15. The response was made orally at the hearing. The appellant set out the following points.

16. The appellant claims she does not have a large amount of information to demonstrate that the horses and goats graze on the land. The animals were kept on the land for personal and not commercial reasons, and she did not have any corroborating evidence, such as invoices for materials, feed, hay bales as well as veterinary services. The agent also indicated that the appellant was away for long periods travelling at the time the appeal statements were due, making it difficult to obtain corroboratory evidence in time.

17. The appellant claims that she has not relied upon anything other than the information that was submitted with the appeal submissions. The information submitted with the appeal was in line with the required deadlines and she did not introduce fresh and substantive new evidence at the hearing to support her case. Also, it was not necessary for the Council to seek a legal representative, it was their choice.

Reasons

18. The appellant's case was not helped by the lack of corroborating evidence. However, the appellant acknowledges that she was unable to provide substantive corroborating information due to being away or by simply not documenting the use with items such as receipts or invoices. In my judgement, the appellant has set out valid reasons to indicate why she was not able to produce the evidence by the deadlines for the appeal.

19. Furthermore, the information the appellant was able to provide was submitted in a timely manner, and the Council were able to respond to the grounds (b), (c) and (f) appeals by the deadlines. The appellant did not produce any new or fresh evidence at the hearing to support her case, and it is the Council's choice to appoint a legal representative to advocate for them at a hearing, not a requirement. As such, in my judgement, the appellant's actions fall short of being unreasonable behaviour, which resulted in costs being incurred as part of the appeal process.

Conclusion on Application B

20. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M. P. Howell

INSPECTOR