



Costs Decision

Inquiry held on 15 November 2023 and 12 September 2024

Site visit made on 12 September 2024

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

Costs application in relation to Appeal Ref: APP/N1920/X/22/3302059 Winfield Mobile Home Park, Hartspring Lane, WATFORD, WD25 8AG

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr M Wenman for a full award of costs against Hertsmere Borough Council.
 - The inquiry was in connection with an appeal against a refusal to grant a certificate of lawful use or development (LDC).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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. "Unreasonable" is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. One of the aims of the costs regime is to ensure that those involved in the appeal process behave reasonably and follow good practice. Examples of unreasonable behaviour which may result in an award of costs against a local planning authority (LPA) include acting contrary to case law, relying on vague, generalised or inaccurate assertions about a proposal and not reviewing their case promptly following the lodging of an appeal against the refusal of planning permission or other application.
4. In summary, the appellant contends that the LPA has behaved unreasonably in that its decision was not well-founded, represents unreasonable behaviour by the LPA and had the application been properly considered the appeal and associated expense would have been unnecessary.
5. As set out in the main decision, the LPA unilaterally amended the description of the development for which the LDC was being sought from *"Existing use of stables granted permission APP/N1920/A/06/2007841 (TP 05/1077) has*

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

*operated in breach of condition for a period in excess of ten years.” to
“Retention of existing commercial use and office space following appeal
decision APP/N1920/A/06/2007841. Certificate of lawful development
(Existing).”*

6. That is not the same as the matter which the appellant sought the LDC for and indeed he did not provide evidence to support. The LDC was subsequently refused by the Council and the appellant argues that the variation made to the description of the development was unlawful. The appellant contends that the variation to the description was self-serving as no evidence was provided to support the grant of a LDC for the varied description. Consequently, it was inevitable that the LDC would be refused because the Council did not consider the evidence in the light of what was actually applied for.
7. S191(4) allows the LPA to modify the description of the existing use, operation or other matter. However, that should be done with care because the power given is discretionary and should not be read as empowering the grant of an LDC for something totally different to what is applied for. The appellant also contends that such powers should not be used when the Council is refusing to grant an LDC, stating that if the LPA is not satisfied that the description would be lawful, then the application should be refused.
8. In this case the Council unilaterally amended the description of what is sought to be confirmed by the application as set out above. In my judgement the new description used does not at all reflect what was being sought by the applicant in submitting the LDC.
9. The appellant's evidence relates only to a breach of condition, but the Council argues that this approach should be rejected because he cannot seek a general declaration that condition 2 is no longer enforceable and the appellant's attempt to reconstrue the condition is unconvincing. If it is the Council's view that the appellant cannot seek a general declaration that condition 2 is no longer enforceable, they should have just refused the application on that basis if the evidence submitted by the appellant was insufficient to discharge the burden of proof placed upon him. Secondly, irrespective of the appellant's interpretation of the specific wording of condition 2, it was incumbent on the Council to determine the LDC on the basis of the description used by the applicant, or an agreed variation of that description reflecting the purpose of the applicant submitting the LDC in the first place.
10. It is not for me to guess what the outcome of the application might have been if the Council had determined it on the basis of the description applied for and the evidence to support that case. I have actually dismissed the appeal on the grounds set out in the main decision, but I have come to that conclusion on the basis of the evidence submitted and the original description used by the appellant when he submitted his LDC application.
11. The Council's evidence at appeal was mainly based on the amended description of development. There have been numerous opportunities for the Council to reflect on their case and revisit the appellant's evidence, but it has failed to do so. In evidence the witnesses did not focus on establishing whether a breach of condition has occurred, but instead sought to consider a broader matter relating to the use of the appeal site and whether uses outside the stables building were continuous during the relevant ten year period.

12. The LPA submitted little evidence of the actual use of the stable bay in question in breach of condition 2 of planning permission reference APP/N1920/A/06/2007841 for the material ten year period and that reflects the overall approach to answer a question which wasn't being asked. Had the Council focussed on the original description it is unlikely that the area of disagreement would have been as wide as it has become and may not have resulted in the need for a two day inquiry, much of which was spent on the matter of the amended description. The unreasonable behaviour is compounded by an apparent failure to fully review its position and case in the light of the appellant's Statement of Case once the appeal had been submitted.
13. The PPG indicates that costs may only 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. For the reasons set out above the Council has behaved unreasonably and has caused the appellant to incur wasted and unnecessary expense in respect of the Council's flawed and unilateral variation to the description of the LDC from one seeking a declaration that a condition on an extant planning permission was no longer enforceable to one for the retention of an existing commercial use and office space following the previous appeal decision.

Conclusions

14. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the amended description of the LDC proposal and a partial award of costs is therefore warranted.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Hertsmere Borough Council shall pay to Mr M Wenman, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in presenting evidence with respect to the amended description of the matter for which the LDC was determined by the LPA; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Hertsmere Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A A Phillips

INSPECTOR