



Costs Decision

Hearing held on 28 November 2024

Site visit made on 27 November 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 6 December 2024

Costs application in relation to Appeal Ref: APP/L3815/C/23/3328981 The Rubbing House, Town Lane, Goodwood, CHICHESTER, PO18 0SP

- 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 Chichester District Council for a partial award of costs against Mr Adrian Burrows.
 - The appeal was against an enforcement notice alleging the material change of use of the Land to a use for recreational amenity storage.
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Decision

1. The application for a partial 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. The Council argue the appellant made a hidden ground (c) in their grounds of appeal statement. Despite this being brought to the appellant's attention and despite the appellant saying there was no ground (c) they continued to pursue one, thus forcing the Council to rebut the ground (c) in their representations. As the ground (c) was manifestly untenable from the start this was unreasonable behaviour on the part of the appellant that led to wasted costs by the Council.
4. The Appellant responds that this was all a misunderstanding by the Council. The appellant made clear they were not pursuing a ground (c) and never had. Despite this the Council insisted on mistakenly thinking there was a ground (c) and so wasted their own time and effort.
5. In the appellant's grounds of appeal statement under the heading of ground (f) they do make the point that when they sited a structure on the land as an office connected to the event venue the Council advised them "*the works fall within the relevant legislation outside that of the GPDO (Caravan Sites Act 1968 (as amended) and Caravan Sites and Control of Development Act 1960 (the 1960 Act))*". I was uncertain what this meant. The structure in question was a pair of joined shipping containers that were being used for storage. It did seem as if the appellant was arguing these were a caravan and so did not need planning permission and this was the view the Council took. In fact whether they were a caravan or not was irrelevant as the stationing of a

- caravan in connection with an unlawful use would itself be part and parcel of that use, and so would be unlawful. Before the notice was issued there had been correspondence with the Council about this and they had provided advice on the issue but had said the shipping containers were not permitted development. There was further correspondence at which it was advised a caravan might be, but that is all irrelevant to the appeal.
6. The appellant goes on to say that the coffee van, shipping containers and water bowser are movable. The Council interpret this also as a ground (c) argument that they do not require planning permission. The appellant does not say this, and the context is that their removal would not remedy any amenity impact. Why the fact they can be moved means their removal would have no effect on amenity is not clear, so I can understand why the Council were misled. Rather like the caravan argument above it makes no real sense and could be a interpret as a ground (c). On the other hand they are so patently misguided (as ground (c) arguments) why assume they were? The appellant finally does argue that the access referred to in the notice has planning permission. This is an unequivocal ground (c) argument.
 7. The Council raised this with PINS who advised both parties to deal with it in their statements. The Council do so and neatly summarise their understanding of the argument by the appellant as *"the twin unit shipping container is a 'permitted development', and that the motor vehicles, shipping container and water bowser are moveable and so do not constitute development requiring the approval of the LPA. They further argue that one of the newly formed access points benefits from planning permission"*. The appellant responds in his statement by confirming there is no hidden ground (c). That should have been the end of the matter. However, he goes on to argue in the next paragraph that the horse box and any vehicles temporarily parked on the site and the use of the site for 28 days a year all *"could be"* permitted development. Nevertheless, this assertion comes after another 'for the avoidance of doubt' comment that there is no ground (c)!
 8. At the Hearing the appellant explained the purpose of all these sallies was to underline the ephemeral and de minimis nature of the activities and structures on the land. If, in other circumstances, certain elements could be permitted development, then what harm were they really doing? It is a shame this was not made explicit in writing. The purpose of these representations remains obscure without the verbal explanation. However, the Appellant has twice said, quite clearly, they are not making a hidden ground (c). Consequently, from that point on (the hearing statement) it was clear to me that whatever point the appellant was trying to make it was not a ground (c) one.
 9. Apart from the planning permission for the access, none of the other points were ever linked by the appellant to an argument that they did not need planning permission. That was an assumption made by the Council. In their costs claim the Council say the appellant never once provided any substantive evidence for their ground (c) claims, but that is because he never actually made any ground (c) claims. I assume the back history involving advice given about the shipping containers that was not accurately described by the appellant, is relevant here as it explains why the Council might have set off down the ground (c) rabbit hole, nevertheless, it never was a ground (c) argument.

10. However, the argument that the access already benefitted from a planning permission was a ground (c) argument. This was not dropped, despite all the claims to the contrary, and the Council provided plans of the relevant planning permissions at the Hearing. It was confirmed at the Hearing the later (1996) planning permission was the one implemented, and I concluded in my decision letter that meant the earlier one could not be relied on so the access did not benefit from planning permission. This was an argument that had been explicitly made by the appellant. Although it was made in the context of ground (f) and of course had ramifications for ground (f), as it is possible to argue that the access could not be required to be stopped up if it benefitted from a separate planning permission, it was still a ground (c) argument in the first place: that the matter alleged (the creation of an access) already had planning permission. However, in my view we would still have had to clear this up because of the ground (f) implications so it did not result in wasted effort on the part of the Council.
11. Consequently, I agree that the appellant's representations were unclear, but the only actual ground (c) argument they made concerned the access. The Council were, not unreasonably, confused, but chose to interpret the rest of the points as ground (c) arguments. The advice both parties were given was to deal with this in their statements at which point the appellant confirmed there was no ground (c). I don't think, therefore, the appellant has acted so unreasonably that the Council have incurred wasted expense and an award of costs is not justified.

Simon Hand

INSPECTOR