



Costs Decision

Site visit made on 14 May 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 June 2019

Costs application in relation to Appeal Ref: APP/R3325/X/18/3214005 West Farm, West Mudford Road, Mudford, Yeovil BA21 5TL

- 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 South Somerset District Council for a full award of costs against Mr Phillip Gunning.
 - The appeal was against the refusal of Council to issue a certificate of lawful use or development for parking on land and servicing within a building of two HGV lorries operating in general haulage, alongside uses specified in LDC Ref 16/03580/COL dated 21 October 2016.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.
3. The Council sought an award of its costs on procedural and substantive grounds. The Council stated that the use applied for contravened the requirements of an enforcement notice and could not be lawful having regard to s191(2)(b) of the Act. Also, the Council stated that the appellant had provided wrong, incomplete and/or misleading information in that the existing use had not been described accurately. Therefore, the Council considered that the appeal had no reasonable prospect of success.
4. At paragraph 052, the PPG explains that appellants are required to behave reasonably in relation to the procedural matters at appeal. The non-exhaustive list of examples of unreasonable behaviour in the appeal procedures in this paragraph include providing information that is manifestly inaccurate or untrue. At paragraph 053, the PPG explains that the right of appeal should be exercised in a reasonable manner; an appellant is at risk of an award of costs being made against them on substantive grounds if their appeal had no reasonable prospect of succeeding. In the non-exhaustive list of examples where this might occur, the paragraph makes it clear that in lawful development certificate (LDC) appeals the onus of proof in matters of fact is on the appellant.

5. The appellant sought an LDC on the basis that the use applied for had subsisted for more than ten years and was therefore lawful. However, an enforcement notice required, amongst other matters, use of land including the site for a similar purpose to that applied for to cease. The notice was in force at the time of the application. The LDC issued by the Council on 21 October 2016 had certified the lawful use of the site but did not include any reference to the use applied for.
6. Nevertheless, the appellant supplied substantial factual evidence to support his claim that the use applied for had subsisted for more than ten years. The Courts have held that an enforcement notice cannot take away lawful use rights¹. Therefore, having regard to the notice and the 2016 LDC it was not unreasonable for the appellant to have argued that there was a lack of clarity surrounding the status of the use applied for, and to seek to test this matter through a further LDC application and subsequent appeal.
7. I shared the Council's conclusion that the use applied for contravened a requirement of the notice. However, this was largely due to the consequences in law of the subsequent material change of use to the different mixed use in the notice. Even where an appellant is professionally represented, it is unrealistic to expect that they will be aware of every Court judgment as to how planning law should be interpreted. There was no paucity of factual evidence from the appellant regarding the use applied for. Therefore, whilst the appeal was dismissed the appellant substantiated his case.
8. The appellant clearly set out the scale of the use applied for and its extent was shown on an accompanying plan. The LDC was sought in respect of around a quarter of the land affected by the notice and was a similar area to that shown on the plan accompanying the 2016 LDC. The appellant's approach was fully explained and detailed in the accompanying factual evidence. The appellant sought to distinguish the use applied for from the mixed use in the notice. As a result, there was nothing inherently wrong, incomplete and/or misleading in the appellant's case. Consequently, there has been no procedural unreasonableness by the appellant in the appeal.
9. As the appellant has not behaved in a manner similar to the above examples of unreasonable behaviour in the PPG relating to the substance of the appeal or its procedures, I cannot assume that the appeal had no reasonable prospect of success. Therefore, the conditions for an award of costs at PPG paragraph 030 have not been met.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in the above appeal.

Stephen Hawkins

INSPECTOR

¹ *Mansi v Elstree RDC* [1964] 16 P&CR 154.