

Costs Decision

Hearing held on 18 July 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 August 2017

Costs application in relation to Appeal Ref: APP/V2255/C/16/3163374 Land at Holywell Lane, Upchurch, Kent

- 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 Paddy Delaney for a full award of costs against Swale Borough Council.
- The hearing was in connection with an appeal against an enforcement notice alleging failure to comply with Condition No1 of planning permission Ref SW/01/0561.

Decision

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

The submissions for Mr Delaney (the Appellant)

2. The Appellant alerted the Council to his concerns about the wording of the notice when he made the appeal on 17 November 2016. On that date he sent an email which included the words 'I do worry about the breach as alleged. Please note my concerns. ... I am concerned the notice may not be right and wonder whether if it would not be best to withdraw it and determine the application first'. The concerns were also mentioned in a letter dated 16 November 2016 to the Council.
3. If the notice had been withdrawn at that time there would have been no need for the Hearing today, and the Appellant would not have incurred unnecessary costs and expense.

The response by the Council

4. The Council appreciate that the notice was withdrawn during the Hearing but it maintains the stance that it is a valid enforcement notice that could be enforced. However, due to the discussions that took place during the Hearing, including the comments by the Inspector, given the nature of possible outcomes depending on the decision made, the Council considered it prudent to reconsider its position.

Reasons

5. 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 process¹.
6. The notice was issued on 26 October 2016 and the appeal was made on 16 November 2016 on grounds (a), (b) and (f). At that time the Appellant submitted his full grounds of appeal and his supporting documents. Nothing further was submitted by the Appellant except clarification of the plans at my request about a week before the Hearing.
 7. The Council submitted all the required documents in accordance with the timetable and also provided some documents near to the date of the Hearing in response to my request and to bring me up-to-date with the emerging Local Plan which was due for adoption on 26 July 2017.
 8. Although the Appellant alerted the Council to his concerns about the terms of the notice, the concerns were not elaborated on. The concerns were merely as stated above in very general terms and I note that the Appellant also said 'There is a breach of planning control, but I do not think it is a stated'. The admission that Condition No 1 was not being complied with, albeit that the Appellant disputed that the condition applied to the appeal site, is stated in the grounds of appeal².
 9. The planning history of the appeal site as shown on the notice is complicated given planning permissions granted in the past, variations of those permissions and differences in the various 'red line' sites to which those permissions applied together with the delineation of the appeal site, the subject of the notice. Despite the discussions that took place at the Hearing the question what conditions applied to the appeal site, the subject of the notice, remained largely unresolved.
 10. However, one matter that was clarified was that the 'personal condition', that is, Condition No1 of planning permission Ref SW/01/0561, did apply to the appeal site and the Appellant conceded that he was in breach of it as alleged on the notice and as referred to above. In the circumstances the Appellant withdrew his ground (b) appeal.
 11. With regard to the ground (a) appeal, it was apparent from the grounds of appeal and the discussion at the Hearing that the Appellant was seeking planning permission for a development that was not the subject of the breach of planning control³ and that success in this appeal would not assist him in his objective. Nor, given the lack of clarity about what conditions applied to the appeal site, would success by the Council necessarily achieve its aims.
 12. Positive discussions took place during the Hearing about ways to resolve the various planning issues that had arisen and, after consideration, the Council withdrew the notice on the understanding that the Appellant would submit a planning application and, if necessary, the Council would serve a further notice in different terms.
 13. The PPG advises that costs may be awarded against a Council for unreasonable behaviour if it withdraws an enforcement notice without good reason⁴. Taking

¹ PPG Appeals Paragraph 030

² Paragraph 1.2

³ Paragraph 5.22 of the Appellant's grounds of appeal and the layout at Appendix 10

⁴ PPG Appeals Paragraph 047

into account the matters set out above I consider that the Council did have good reason to withdraw the notice and that it did not act unreasonably in so doing.

Conclusions

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

Gloria McFarlane

Inspector