

Costs Decision

Site visit made on 22 March 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 11 May 2017

Costs application in relation to Appeals Referenced:

**APP/Z2505/C/16/3158727, APP/Z2505/C/16/3158728 &
APP/Z2505/C/16/3158536**

Willow Lodge Park, Chapel Hill Road, Chapel Hill, Lincoln LN4 4QB

- 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 Boston Borough Council for a partial award of costs against Mr & Mrs R Driscoll and Mr A Forman.
 - The appeal was against an enforcement notice alleging: Without planning permission the occupation of holiday homes for permanent full time occupancy in breach of condition 6 of planning permission number B/04/0793, dated 17 December 2004..
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Decision

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

Procedural Matters

2. A single application for an award of costs was made by the Council in relation to three appeals that were submitted against the enforcement notice. Two of those appeals were submitted by Mr and Mrs Driscoll and the other by Mr Forman. The appeal forms indicated that all three were submitted on ground (a), which is that planning permission should be granted for the matters stated in the breach, and ground (d) which is that it was too late, at the time the notice was served, to take action against the alleged breach. As is often the case when appeals are submitted on ground (d) the appeals were initially scheduled to be determined following a Public Inquiry
3. However, the ground (d) appeal in relation to all three appeals was subsequently withdrawn and the Council seeks a partial award of costs in relation to the expense of preparing its Inquiry statement in that regard. Although there are three appeals, the Council made its application in a single letter and the issues are common to all three. Therefore, I have issued my decision in a single letter.

The Parties' Cases

The Council's Application

4. The Council's application for costs was submitted in writing and, as the contents will be familiar to the parties involved, the following is a summary of that application.
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5. The application is made against all three appellants and the Council asserts that all three have behaved unreasonably and that unreasonable behaviour has led the Council to incur unnecessary expense in the appeal process, having regard to advice at paragraph 027 of the Planning Practice Guidance (PPG)¹.
6. In order to prepare the Statement of Case for the Inquiry, to the deadline of 23 November, the Council instructed Counsel and sought legal advice. The appellants then sought a number of extensions of time for the submission of their statements, agreed until 7 December 2016. Upon the receipt of the appellants' cases the ground (d) appeal had been withdrawn. The appellants acted unreasonably in not alerting the parties to the possible or imminent withdrawal of this ground.
7. The letter on behalf of Mr and Mrs Driscoll dated 7 December 2016 attached the appellants' Statement of Case and it was in this letter that the ground d) appeal was withdrawn. That 'this ground is unlikely to succeed' is a frivolous use of the appeal process and fails the aim of the costs regime to encourage parties to be timely in the presentation of full and detailed evidence. The Council then had to contact the Inspectorate to seek clarification on the procedure given that the original start date letters indicated that the Inquiry procedure would be followed since ground d) had been pleaded. If the appellants had properly considered their grounds the procedure could have been amended earlier without the Council having to prepare the statement of case.
8. In addition, Mr Forman's Statement of case received from the Inspectorate under cover dated 3 March refers to an Inquiry and a completed Inquiry timetable form was completed with it. This is despite the Inspectorate notifying parties on 19 January that it had been agreed to cancel the Inquiry. This appellant has failed to follow the timetable and procedure and has put the Council to unnecessary costs. The Driscoll's Statement of case received under cover from the Inspectorate dated 3 March appears identical to the Statement received from the appellants under their cover dated 7 December. The Council has incurred unnecessary time and cost in reading this statement again, sent from PINS, when it is the same as the appellants' earlier Statement.
9. The Council requests a partial award of costs against the appellants for the Council preparing to defend the ground d) appeals.

The Response from Mr & Mrs Driscoll

10. The appellants dispute that they behaved unreasonably or that their actions have caused unnecessary or wasted expense. The appellants were perfectly entitled to appeal on grounds that they believed were valid. The timescale for submitting an appeal against an enforcement notice is short and if a ground is not submitted it cannot be raised at a later date. On the information provided, the appellants believed that there was evidence to support an appeal on ground (d) but, as matters were investigated further, it became apparent that there was insufficient evidence to support such a ground.
11. The ground was withdrawn at the earliest possible moment and the Council will not have incurred expense beyond that which they would have incurred in any event in dealing with the appeals.

¹ Reference ID 16-027-20140306

Mr Forman

12. No response to the costs application has been received from Mr Forman.

Reasons

13. Paragraph 030 of the PPG makes clear that an award of costs may be granted where a party has behaved unreasonably and that behaviour has led another party to incur unnecessary expense in appeal proceedings. A non-exhaustive list of the kind of behaviour that may lead to an award of costs against an appellant is set out at paragraphs 051 to 054 of the PPG. Examples where an award may be justified on procedural grounds include a failure to adhere to deadlines or the withdrawal of an appeal without good reason. Paragraph 054 explains that appellants are advised to withdraw an appeal at the earliest opportunity if there is good reason to do so. To my mind, that advice also relates to situations where a specific ground of appeal is withdrawn in enforcement cases.
14. In this case, the Council's claims revolve around the withdrawal of the appeals on ground (d). Firstly, I note that the Council does not seek to suggest that it was unreasonable for the appellants to submit the appeals on that ground in the first instance. Appeals on ground (d) are often complex and the question of whether sufficient evidence is available to support an appeal is also often finely balanced. There also appears to have been some confusion in this instance as to the time period within which enforcement action could be taken, having regard to section 171B of the Town and Country Planning Act 1990. The Council had initially served a notice which suggested that the relevant period was four years from the date of the breach but subsequently withdrew that notice and served another setting out the correct period of ten years.
15. To my mind, that sequence of events had the potential to cause some confusion for the appellants. In addition, as noted by Mr and Mrs Driscoll, the time period within which an appeal must be submitted against an enforcement notice is short and it was not unreasonable for them to submit appeals on ground (d) in light of the circumstances of the case.
16. The ground (d) appeals were withdrawn at the point at which statements were submitted, following a request for an extension to the deadline which was accepted by the Planning Inspectorate. In my view, the withdrawal at that point was not untimely, given the likely need for the appellants to seek professional advice and consider the merits of the case. Fundamentally, they did not seek to persist with a ground of appeal that had no reasonable prospect of succeeding and, had they done so, that behaviour that would have been grounds for an award of costs in itself, having regard to paragraph 053 of the PPG.
17. Rather, the withdrawal of the ground at that point in time avoided the need for, and expense of, a Public Inquiry and the need for the Council to prepare written proofs of evidence. The statement of the Council had been prepared at the point at which the ground (d) appeals were withdrawn but a statement would have been required in any event and I am not satisfied that the behaviour of the appellants led to any significant extra expense. The Council suggests that it had sought legal advice by the point the ground was withdrawn but little evidence has been provided as to what that advice entailed. Presumably, advice had also been sought at an earlier stage in relation to the

correct time period for serving the notice, hence the withdrawal of the original notice. It is not clear what additional advice was sought by the Council following the submission of the appeals.

18. In addition, the Council criticise the appeal statement submitted by Mr and Mrs Driscoll on 03 March in relation to the written representation procedure on the basis that it contained largely the same information as their earlier statement of 07 December. The mere fact that the Council had to read the latter statement is not evidence of wasted expense and the fact that no new information was provided is an indication that the additional expense incurred by the Council was minimal.
19. Fundamentally therefore, I find that the appellants did not behave unreasonably in the submission of the ground (d) appeals and am satisfied that the appeals were withdrawn in a timely manner, avoiding the need for a Public Inquiry and the additional expense that would have incurred. Thus, I find no evidence of unreasonable behaviour and little evidence of unnecessary costs being incurred. Accordingly, there are no grounds for an award of costs and I shall refuse the application.

Chris Preston

INSPECTOR