
Costs Decision

by P N Jarratt BA DipTP MRTPI

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

Decision date: 8 June 2015

**Costs application in relation to Appeal Ref: APP/X1735/C/14/2226702
Land south of Mandai, St Peter's Road, Hayling Island PO11 0RT**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr L Stanley for a full award of costs against Havant Borough Council.
 - The appeal is against an enforcement notice alleging the change of use of land from residential garden within the curtilage of the property known as Mandai, to a mixed use for the parking of caravans used for residential purposes and use of the land for leisure use with ancillary development
 - **Summary of decision:** Application for an award of costs is allowed.
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Background to the application

1. I opened a public inquiry on 20th May 2015 to consider the appellant's appeals on grounds (d) and (g) in respect of the enforcement notice. However, the wording of the notice was deficient in a number of respects. Firstly, the heading of the notice relates to operational development whereas the allegation attacks the use of the land. Secondly, the allegation refers to land being residential garden within the curtilage of the property known as Mandai, when it should just have referred to garden land as the site has not formed part of the curtilage of the adjoining property for many years and is in separate ownership. Thirdly, the steps require the removal of two mobile caravans, parked and stored vehicles, a storage container, a CCTV installation, a hot tub, hardstandings and patios, timber shed, decking, chiminea and skips. The steps fail to require any cessation of the uses alleged. The Council, having considered the matter, felt that this had been an omission on their part and should have been included in the notice.
2. Although I have the power under s173 to correct and vary the notice, I can only do this if I am satisfied that no injustice to the parties would occur. The appellant considers that such changes to the notice would lead to an injustice as the base use of the alleged breach has changed; the steps expand on what would otherwise have been required thus resulting in the case having to be changed; and, that the provisions for under-enforcement could not now be met.
3. In view of this, the Council withdrew the enforcement notice at the inquiry and the appellant made a full application for costs.
4. 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.

The submissions of the Appellant

5. The applicant in good faith had taken on board the enforcement notice and sought professional and legal advice. The changes now required to make sense of the notice and to determine the issues are of great importance to the applicant. It is unreasonable for the applicant to be in the inquiry process when the notice has been withdrawn and this has been a waste of time and money. The PPG seeks to ensure that time is spent focussing on issues but now the applicant is potentially facing a further notice and a possible inquiry. The applicant has had to take the notice as he found it and he would have expected the Council to take care in its drafting. Many of these matters were raised in an application for a lawful development certificate (LDC) some months ago.

The response of the Council

6. Once the Council had its attention drawn regarding the use of the land for leisure, it has taken steps as soon as possible, ie on the morning of the inquiry. Had the Council been aware of the error in the enforcement notice it could have withdrawn the notice earlier. The LDC application did not raise issues relevant to the notice.

Reasons

7. The PPG at paragraph 048 sets out the type of behaviour may give rise to a procedural award of costs against a local planning authority. This includes the withdrawal of an enforcement notice without good reason.
8. The notice is defective in three ways as described above. Although the error in the heading is not significant, the drafting of the allegation to refer to the land being within the curtilage of Mandai just does not follow from either the Council or the applicant's evidence, or from the agreed Statement of Common Ground. This error could have been corrected much earlier than the day of the inquiry thereby providing the applicant with the opportunity to marshal his case accordingly. Similarly, the substantial change to the requirements of the notice only occurred on the day of the inquiry and this too would have required the appellant to address the implications of this requirement in the presentation of his case.
9. I do not consider that the withdrawal of the notice on the day of the inquiry was with good reason as the notice should either have been withdrawn earlier or suggested corrections and variations put to the applicant well in advance of the inquiry so that these new matters could have been considered.
10. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the Guidance, has been demonstrated and that a full award of costs is justified.

Decision

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

Costs Order

12. 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

Havant Borough Council shall pay to Mr L Stanley, the costs of the appeal proceedings described in the heading of this decision.

13. Mr L Stanley is now invited to submit to Havant Borough Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

P N Jarratt

Inspector