



Costs Decisions

Inquiry Held on 4 December 2018

Site visit made on 4 December 2018

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 11 December 2018

Costs application in relation to Appeal A: Ref: APP/P2365/C/17/3190196 Pear Lea Farm, 10, Hares Lane, Scarisbrick, PR8 5LQ

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by West Lancashire Borough Council for a full award of costs against Mrs Angela Pearce.
 - The inquiry was in connection with an appeal against an enforcement notice alleging use of the land for the siting of a storage container and residential caravan with associated garden, hardstanding and decking areas.
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Costs application in relation to Appeal B: Ref: APP/P2365/X/17/3189284 Pear Lea Farm, 10, Hares Lane, Scarisbrick, PR8 5LQ

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by West Lancashire Borough Council for a full award of costs against Mr Robert Sumner.
 - The inquiry was in connection with an appeal against the refusal of the Council to issue a certificate of lawful use or development for the siting of a residential caravan.
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Decision

Appeal A

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

Appeal B

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

Preliminary Matter

3. Mrs Pearce explained at the inquiry that she had been incorrectly referred to as Mrs Angela Sumner on the appeal form. Her correct name is used in this letter.

The submissions for the Council.

4. The costs application was submitted in writing, with additional points made orally.
5. In summary, the appellants in both appeals have acted unreasonably in terms of both the procedure and the substance of their cases. In terms of procedure, both failed to provide proofs of evidence in accordance with the relevant Rules, despite being alerted to the issue by both the Council and the Planning Inspectorate (PINS). In terms of substance, the only evidence in each case

made it clear that each was bound to fail. Indeed, Mrs Pearce accepted that the enforcement notice was not wrong.

The response by Mrs Pearce (Appeal A)

6. The situation was nothing to do with her. She took no part in the development and even advised her brother (the co-owner with her of the land) against it.

The response by Mr Sumner (Appeal B)

7. The appellant didn't understand the situation. He just followed the advice of the original agent, Mr Slade, who indicated the appeal could go either way. He didn't realise there was a risk of costs.

Reasons

8. The Planning Practice Guidance 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.
9. Turning first to procedural matters, Rule 13 of The Town and Country Planning (Inquiries Procedure)(England) Rules 2000 requires any person entitled to appear at an inquiry who proposes to give evidence at the inquiry by reading a proof of evidence to submit that proof in accordance with a stated timetable. However, in neither of these appeals does it appear that there was ever an intention to read a proof but to give evidence orally. The appellants' original grounds of appeal were set out in writing and the oral evidence given at the inquiry did not differ greatly from the earlier written submissions. The Council did not seek an adjournment to assimilate and respond to any new oral evidence which was unexpected. Accordingly, the appellants' procedural behaviour in failing to submit written proofs was not unreasonable.
10. I now turn to the substance of the cases. In relation to Appeal A, Mrs Pearce's own evidence, corroborated by other witnesses, was that the caravan had not been in place for the continuous 10 year period she was required to demonstrate, having appealed solely on ground (d). Indeed, she freely accepted that the enforcement notice was correct. The appeal therefore had no reasonable prospect of success and conducting an appeal in such circumstances amounts to unreasonable behaviour which has caused the Council to incur unnecessary expense in defending the appeal.
11. There appear to have been unfortunate communication issues between the various parties in these two appeals. Mrs Pearce claimed at the inquiry that she knew nothing about the appeal, which was put in by an agent, Mr Slade, on her behalf on 25 November 2017. However, if that is the case, that is a matter she should take up with her agent or whoever instructed him.
12. From the date of submission of the appeal, the agent communicated with PINS up until July 2018. However, on 12 November 2018, PINS received written notification from Mr Sumner that Mr Slade was no longer acting for him (in relation to Appeal B). In the event that this also applied to Appeal A, PINS sent copies of all subsequent correspondence in relation to Appeal A to "Mrs Angela Sumner" at Pear Lea Farm. This included the Council's proof, sent on 14 November 2018. If Mrs Pearce didn't know about the appeal previously, she would have known then and, if she disagreed with it, could have withdrawn it,

thereby reducing her exposure to a costs application. However, she appeared at the inquiry as the appellant and proceeded to conduct her case.

13. In relation to Appeal B, Mr Sumner's own evidence was that 2 friends of his owned and occupied the caravan when it was moved onto the appeal site in 2015. They lived there as a separate household, even erecting some decking and siting a container without Mr Sumner's prior knowledge or consent. He could therefore not have succeeded with either of his 2 potential arguments. He could not have demonstrated the required 10 year period of use. And nor could he have shown that the caravan was being used incidentally to the use of the main dwellinghouse as such, even had I accepted that the appeal site fell within its residential curtilage. The appeal therefore had no reasonable prospect of success and conducting an appeal in such circumstances amounts to unreasonable behaviour which has caused the Council to incur unnecessary expense in defending the appeal.
14. On 12 November 2018, Mr Sumner emailed PINS indicating he no longer wished to apply for the "land (sic) development certificate". He failed to respond to the reply from PINS asking for written confirmation of this. Indeed, at the opening of the inquiry, in response to my question, Mrs Butler confirmed on his behalf that he wished to proceed with the appeal. Again, it appears that there have been communication difficulties between both appellants, and between them and their agent. However, that is for them to resolve. For its part, the Council appears to have warned Mr Sumner of the risk of incurring costs should he proceed and advised him to take professional advice.

Costs Order

Appeal A

15. 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 Mrs Angela Pearce shall pay to West Lancashire Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Mrs Angela Pearce, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal B

17. 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 Mr Robert Sumner shall pay to West Lancashire Borough Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Mr Robert Sumner, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

B.S. Rogers Inspector