The Planning Inspectorate

Costs Decisions

Inquiry held on 25 – 27 April 2023

Site visit made on 27 April 2023

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Costs application in relation to 3 Appeals at Land situated at Lyndon Thomas Ltd., Birchfield Springs, Rushton Road, Desborough, NN14 2QN
Appeal A Ref: APP/L2820/C/20/3253535
Appeal B Ref: APP/L2820/C/20/3253536
Appeal C Ref: APP/L2820/C/20/3253537

- 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 Lyndon Thomas Ltd, Lyndon Thomas and Samantha Thomas for a full award of costs against North Northamptonshire Council.
- The Inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the land to a mixed sui generis use.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 process.

The submissions for the Appellants

3. The appellants have submitted their application for costs in writing so I will not reproduce that document here. However, the 3 main points made are set out in the following paragraphs.

4. Firstly, the appellants consider that it was unreasonable of the Council to submit rebuttal proofs at a late stage which did not contain any information that was previously unavailable to the Council and which were not in fact a response to the appellants' case but an augmentation of its own position. The areas of disagreement were to have been set out in a Statement of Common Ground and wasted expense was incurred in dealing with the late evidence.

5. They also claim that the Council behaved unreasonably, according to its own enforcement policy in refusing to engage in discussions aimed at regularising the position on site in respect of the lakes whilst still maintaining control over any alleged breaches of planning control. The development site had been described by the County Council as 'virtually uncontrollable' following the grant of planning permission and the entire cost of the Inquiry could have been avoided if the Council had agreed to measures to try and redress this situation.

6. Finally, the appellants submit that it was unreasonable of the Council to fail to provide a witness who was able to provide an analysis of much of the documentary evidence produced in respect of the case and who could not respond to appropriate cross-examination. One witness produced a proof of evidence containing allegations that she confirmed she did not personally support and the documentary evidence had not been reasonably assessed before being put to the Inquiry.

The response by the Council

7. The Council has submitted its response in writing and, in summary, they consider that the rebuttal proofs were a reasonable response and arose out of a point made at the pre-Inquiry meeting to provide clarification of the Council's stance on points raised by the appellants' witness on the discharge of conditions, sale of minerals from the site and the importation of waste.

8. The Council are under no obligation to accept a retrospective application for works carried out and it was open to the Council to conclude that the only way of addressing the multiple breaches of planning control that were continuing on site was to continue with enforcement action.

9. The Council's witnesses were cross-examined in some detail on the factual and documentary evidence submitted to defend the appeal. If the witness was not able to directly speak to or confirm documentary evidence that contradicted the appellants' case, that would not be unreasonable as it could only benefit the appellant.

Reasons

10. In respect of the rebuttal proofs, it is not uncommon for such documents to be submitted prior to the opening of a planning Inquiry. In this case they were sent in on 20 April prior to the opening of the Inquiry on 25 April. The Statement of Common Ground (including areas of dispute) was signed on 21 April.

11. I consider that the rebuttal proofs did not go beyond the scope of matters that were already flagged up as disagreements between the parties and provided clarification of the points that were being put forward. The appellants had time to consider them before the Inquiry opened and they did not prolong the proceedings.

12. Both statements clearly reference the paragraphs of the proofs of evidence they are referring to and, while there was some additional documentary evidence produced, I am not persuaded that its submission at this stage caused any disadvantage or unnecessary costs to the appellants.

13. The Council was not necessarily unreasonable in considering that enforcement action was the only way of responding to the breaches of planning control it considered were occurring on the site. I have found in the main Decision that some of these concerns were valid and, although the enforcement notice has been quashed, it was not, therefore, unreasonable of the Council to have taken the stance that it did.

14. Neither do I find it unreasonable for the Council to have put forward the witnesses who expanded its case, even if they were limited in the scope of questions they could answer. Any lack of personal involvement prior to the

enforcement process by the witnesses and the fact that they were not wholly responsible for drafting the Expediency Report may have weakened the Council's case but that can only have advantaged the appellants.

Conclusion

15. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Katie Peerless

INSPECTOR