



Costs Decision

Site visit made on 27 September 2007

by **George Mapson** Dip TP Dip LD MRTPI

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

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Decision date:
8th October 2007

Costs application in relation to Appeal Ref: APP/L2820/C/07/2035250

Land at Springfield Farm, Glendon Road, Rushton, Northamptonshire NN14 1QE

- The application is made under the Town and Country Planning Act 1990, sections 174, 175(7) and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Kettering Borough Council for a [partial] [full] award of costs against Mr Mark Hawkes.
- The appeal was against an enforcement notice alleging [brief details of allegation].

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Kettering Borough Council

1. The Council referred to Circular 8/95, Annexes 2 and 3 and asserted that the appellant had acted unreasonably in failing to comply with the general procedural requirements in appeal proceedings and in failing to substantiate his case. His unreasonable behaviour had caused the Council to incur unnecessary costs.
2. Annex 2 of the Circular deals with general procedural requirements in appeal proceedings. Paragraph 3 gives examples of what may be regarded as unreasonable behaviour and at sub-section (2) cites:
"...failing to provide the required information in support of an appeal; or refusing to discuss the appeal, or failing to respond to a planning contravention notice if this causes the authority to incur unnecessary expense in resisting a subsequent appeal."
3. The appellant failed to supply details of any justification for the temporary dwelling on the land. He failed to respond to a planning contravention notice and human rights questionnaire. Despite the Council's letters and telephone calls to the appellant's agent, no information has been provided and no planning application for the development has been submitted. No information relating to agricultural justification has been submitted in support of his ground (a) appeal.
4. Annex 3 of the Circular gives examples of unreasonable behaviour relating to the substance of the case and paragraphs 1-6 deal specifically with awards of costs against appellants. Paragraph 3 states that where the development plan is material and there are no other material considerations, the applicant will risk an award of costs against him if he pursues the appeal but is unable to produce substantial evidence to support his contention that there are material considerations which would justify an exception to the policies in the development plan.
5. The Council's officers explained the relevant local and national planning policy to the appellant and his agent. The officers made it clear that siting a temporary dwelling on this land would only be considered acceptable if it could be demonstrated that there was sufficient agricultural or other justification for it. The appellant failed to put forward any good reasons that would justify an exception to these policies and

consequently, it follows that the ground (a) appeal can have no reasonable prospect of success.

6. The appellant's failure to supply information or any justification for the development prior to the appeal, and his failure to supply it as supporting evidence for the ground (a) appeal represent deliberately uncooperative behaviour, particularly as the Council had drawn his attention to the relevant issues and facts and he has had access to professional representation via his agent.

The Response on behalf of Mr Mark Hawkes

7. On behalf of the appellant, it was argued that to punish him with costs would be unreasonable.
8. When the appellant bought the site it already benefited from a grant of planning permission to construct a roadway to the back corner of the land to establish a small farm. He then obtained planning permission to build a calf rearing suite. Work has commenced on this project, but it has been hampered by thefts from the land, including the theft of the complete steel frame of the new building. The mobile home on this site is needed on the land to watch over the appellant's cattle and provide security.

Conclusions

9. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
10. An award of costs is not intended to be a punitive measure; there is no question of costs being awarded to punish the appellant. As the Circular makes clear, the availability of such awards is to bring a greater sense of discipline to the parties involved in planning proceedings.
11. In deciding whether behaviour is unreasonable, a factor to be taken into account is the extent to which the appellant obtained professional advice. In this case, the appellant was professionally represented and was fully informed by the Council of the strict controls that local and national policies impose on new residential development in the countryside. The Council's decision to issue the enforcement notice was expedient given the breach of planning control that had occurred.
12. The appellant and his agent failed to meet the normal procedural requirements for appeals. I appreciate that the theft of items from the land might have been a setback to the appellant's plans to develop a farming enterprise, but that does not explain his failure to apply for permission for the mobile home on the land; provide details of his proposed agricultural undertaking; respond to the planning contravention notice or to the human rights questionnaire; or respond to the Council's telephone calls or letters seeking information relating to his appeal. In the circumstances, the appellant's non-co-operative attitude and his disregard for the procedure rules amounted to unreasonable behavior and caused the Council to incur unnecessary expense.
13. The Circular explains that development that "*flies in the face*" of such policies, and which obviously has no reasonable prospect of success, will run the risk of an award of costs against those pursuing such development, depending on the circumstances. In this case, it should have been evident to the appellant and his agent that siting and occupying a mobile home on this land without any clear cut agricultural justification ran counter to development plan and national planning policies. Consequently, the appeal had little prospect of success. This factor, together with the appellant's failure to

submit substantive evidence in support of his appeal, amounted to unreasonable behaviour.

14. I have taken account of all the matters raised, but for the reasons given I conclude that an award of costs is justified.

Formal Decision and Costs Order

15. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Mr Mark Hawkes will pay to Kettering Borough Council the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed.

16. The proceedings concerned an appeal under section 174 of the Town and Country Planning Act 1990, as amended, against an enforcement notice issued by Kettering Borough Council alleging:

"Without planning permission: change of use of the land from agricultural use, to a mixed use for agriculture and the stationing of, and residential occupation of a caravan in the approximate position on the attached plan marked with a green cross; and the carrying out of works as part of the unauthorised change of use, namely the provision of timber decking, lighting and a timber fuel storage shed."

on land at Springfield Farm, Glendon Road, Rushton, Northamptonshire NN14 1QE.

17. The applicant is now invited to submit to Mr Mark Hawkes, to whose agent 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 Supreme Court Costs Office is enclosed.

George Mapson

INSPECTOR