The Planning Inspectorate

Costs Decision

Inquiry held and site visit made on 10 August 2016

by V F Ammoun BSc DipTP MRTPI FRGS

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

Decision date: 27 October 2016

Costs application in relation to Appeal Ref: APP/R3325/C/15/3141521
Land at Diacut Limited, 192 Marsh Lane, Henstridge, Templecombe BA8 0TG

- 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 Mr Hugh Hayward for a full award of costs against South Somerset District Council.
- The inquiry was in connection with an appeal against an enforcement notice alleging use of the land for stationing three mobile homes for residential purposes.

Decision

1. The application fails.

The submissions for Mr Hugh Hayward

2. As the application was made in writing, I do not summarise it here (Document C1 relates).

The response by South Somerset District Council

3. The application was astounding, it had been made at the last possible moment contrary to Planning Policy Guidance (PPG), and could have been made before the Inquiry. There was no substance to the application. It claimed the Council had refused to acknowledge the relevance of the *Carter* case, but Mr Noon had replied at length to this, and provided evidence to support its position.

4. The Council had received no notice of Mr Haywood or Mr Nicholls evidence, only a Rule 6 statement had been provided but no proofs. The Council had nevertheless refrained from seeking its own costs.

5. If the Appellant had been unclear about the terms of the notice no costs had been incurred thereby. Clarification had been provided in the morning session. There had been a failure to prove unreasonable behaviour – it was simply a case of a difference of view. No costs should be awarded.

Rejoinder for Mr Hugh Hayward

6. The PPG was only guidance. The attendance of Mr Nicholls had been made clear to the Inspectorate, and why he would be present.

7. The Appellant had made clear the reliance on *Carter* well in advance of the Inquiry, it was appreciated that this had not been accepted. It was not denied that the Council had considered the matter.

Reasons

8. The national Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only 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 application turns on whether the Council provided evidence to substantiate its position that the appeal should fail notwithstanding the *Carter* case. I shall consider this matter first, before dealing with the claim that the notice was poorly drafted.

9. The Council referred to case law to support their view that *Carter* was not determinative as to caravan status in this particular case, in particular having regard to the effect of neighbouring building works. Their argument that not being a caravan did not establish that a unit was a building was not disputed. As to whether the units were buildings, they applied the tests of a building set out in the agreed statement of common ground. Whatever the merits of the Council arguments, they were in my view sufficient to substantiate a position that the appeal should fail notwithstanding the *Carter* case. I conclude that the Council did not behave unreasonably in resisting the appeal.

10. Turning to the claim that the notice was poorly drafted, I do not consider that the failure to specify which unit should be removed was unclear, as the requirement could be met by removing either unit. The requirement to restore the land to its condition before the breach took place was also not unclear to the Appellant, who as occupier of the site from the outset would have known what that condition was. Such a requirement might have involved subsequent disagreement as to what that condition was, but would not necessarily have done so, and there was no evidence of potential disagreement in this case. In the event upon considering the previous state of the land as known to them the Council concluded that this requirement was unnecessary. Though this implies a lack of care in drafting the requirements, given the peripheral and undisputed nature of this particular matter I do not consider that it amounts to unreasonable behaviour. The Council sought to allow the Appellant to conditionally retain one unit on the land, but phrased this as a requirement of the notice thereby going beyond what was needed to remedy the breach of control. It was however clear from their representations that the intention was to protect the Appellant's interest. An error in wording is not in itself necessarily unreasonable, and in these circumstances I do not consider that it amounted to unreasonable behaviour.

11. As I have not found unreasonable behaviour by the Council, the question of consequential costs or unnecessary expense does not arise and the costs application will fail.

V F Ammoun

INSPECTOR