

Costs Decisions

Accompanied site visit made on 11 October 2016

by Felix Bourne BA(Hons) LARTPI Solicitor

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

Decision date: 14 November 2016

Costs applications relating to Appeal Refs: APP/T1410/C/16/3144452 & 3144858

4 Nuthatch Road, Eastbourne, BN23 7RN

- The applications are made under the Town and Country Planning Act 1990, sections 174, 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by the appellants for a full award of costs against the Council.
 - The appeals were against an enforcement notice issued by the Council in relation to the change of use of land to include the keeping of pigeons in the rear garden of the property within purpose-built structures.
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Decisions

1. The applications for an award of costs are in each case refused.

Reasons

2. The Government's Planning Practice Guidance has superseded Circular 03/2009, and paragraph 030 of the NPPG indicates that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The appellants' agent contends that the Notice is "ill founded and fundamentally flawed". In particular it is argued that the number of pigeons kept at the property is not a planning matter and that the appellant could, if he wished, cover up to 50% of the garden area with buildings /sheds for his enjoyment without consent. Criticism is also made on the Council's failure to submit an Appeal Statement.
 4. Taking these points in turn, I agree with the Council that the number of pigeons is capable of being both a planning consideration and an environmental issue. As explained in the appeal decisions, the requirement in the Notice to limit the number of pigeons is therefore perfectly legitimate. The claim that the appellants could cover up to 50% of the garden area with buildings /sheds is flawed. The appellants' agent is presumably referring to the permitted development rights granted by the Town and Country Planning (General Permitted Development) Order 1995, as amended: however, in order to be capable of constituting 'permitted development' any such building must be required for a purpose incidental to the enjoyment of the dwellinghouse as such. With regard to the Council's failure to issue an Appeal Statement, it seems to me that the Reasons stated in the Notice for issuing the Notice, together with the Report to Committee, sets out the Council's case perfectly
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adequately. The Report to Committee also contains information as to the number of third party representations.

5. Thus, having considered the matters referred to above and all other matters raised by the appellants, I cannot identify, in relation to either of the appeals, unreasonable behaviour on the part of the Council that has directly caused the appellants to incur unnecessary or wasted expense in the appeal process. Accordingly, the applications for an award of costs are each refused.

Felix Bourne

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INSPECTOR