



Costs Decision

Site visit made on 14 February 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 1 March 2017

**Costs Application in relation to Appeal Ref: APP/K0425/C/16/3151228
Berry Farm, Mudds Bank, Wycombe Road, Stokenchurch, Bucks HP14 3RS**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Max Roberts against Wycombe District Council.
 - The Appeal was against an Enforcement Notice (EN) alleging the erection of four polytunnels, a storage shed and 2m high fencing.
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Decision

1. The application for a partial award of costs against the Council is refused.

Reasons

2. 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 expense in the appeal process.

The gist of the case for the Appellant

3. It is contended that the Appellant has been put to unnecessary and wasted expense by having to appeal the enforcement notice and that LPA has behaved unreasonably. It is argued that most of the unauthorised development (the four polytunnels) is due to be replaced by two larger tunnels which were granted planning permission in March 2016. The appeal had to be made in order to keep the structures until the new ones were erected and hence to continue the agricultural operations.
4. It is accepted by the Appellant that, at the time the notice was served, there was no valid consent in place for the storage building, albeit an application had been submitted and was being considered by the LPA. Accordingly the claim for costs is for a partial award in relation to the polytunnels element.

The gist of the LPA response

5. The LPA does not consider that it acted unreasonably. It is accepted that permission has been granted for the two new polytunnels. However, it is stressed that, if it was the intention of the Appellant to remove the other tunnels (which are considered to be harmful to the character and appearance of the CAONB) there might have been no need to issue the notice. But, in the particular circumstances of this case, the LPA needed to be sure that the unauthorised development was removed and that the enforcement notice would be the only sure way to remedy the harm caused by the unauthorised development comprising the 4 polytunnels; the storage shed and the fencing.
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Assessment

6. Turning to the facts of this case; the planning history and my conclusions on the appeal, I agree with the LPA that it was necessary to issue the enforcement notice. There is a history on this site of unauthorised development and the only authorised works at present are the two newly permitted polytunnels. I accept that there is an application in place for a new storage shed and I agree with the Council that this is acceptable in principle. The previous Inspector was of the same view and also considered that the siting of the two new polytunnels was acceptable.
7. However, I have also found that that the unauthorised works are harmful to CAONB and that planning permission ought not to be granted for their retention. In my view the LPA was entitled to reach the same conclusion. Compliance with the notice will ensure that the harmful elements are removed. As to their removal being delayed, until the permitted tunnels are in place, I consider that an additional 3 months is adequate for the Appellant to comply with the notice.
8. There will clearly need to be careful planning of the replacement of the inappropriate polytunnels with the 2 authorised ones. But overall I consider that a 6 month period of compliance (in addition to the time since the appeal was made) is more than adequate to allow the Appellant to both remove the unauthorised works and to build the newly authorised development.
9. In conclusion I do not consider that the LPA has behaved unreasonably and nor has their action caused any unnecessary expense in the appeal process for the Appellant. The application for partial costs cannot be justified and, therefore, the application is refused.
10. In reaching my decision I have taken into account all of the other matters submitted in support of the application. However, none is of such significance to change my decision.

Anthony J Wharton

Inspector