



The Planning Inspectorate

Final

Costs & Decision Team

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Your Ref: 16/36
Our Ref: APP/D0840/C/16/3152855
Date: 4 August 2017

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 174 AND 322
LAND AT TOLVER WATER HOUSE, TOLVER, LONG ROCK, PENZANCE
APPEAL BY MR DAVID NICHOLLS: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspector's decision dated 20 January 2017 concerning the appeal by Mr David Nicholls. The appeal was against an enforcement notice issued by Cornwall Council on 24 May 2016. The notice alleged a breach of planning control on land described above by:

'The unauthorised construction of an annexe by way of an extension to an existing garage in the approximate position shown edged green on the attached plan 2 which is not in accordance with planning permissions approved under decision number PA11/01896 or PA11/07905 and the unauthorised material change of use of agricultural land in the approximate position shown edged orange on the attached plan 2 to a use for domestic purposes in connection with the unauthorised annexe'.

2. This letter deals with your application¹, on behalf of the appellant, for a full award of costs against the Council as made in your written correspondence dated 1 February and 28 February 2017. The Council replied on 28 February 2017. As these costs submissions have been made available to the parties it is not proposed to summarise them.

Summary of decision

3. The costs application succeeds and a full award of costs is being made. The formal decision and costs order is set out in paragraphs 14 and 15 below.

Basis for determining the costs application

¹ Although the application was 'late' the Inspectorate's letter of 21 February 2017 explained why there was sufficient justification for accepting it for consideration.

4. In enforcement notice appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party in proceedings which do not give rise to a local inquiry where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered in the light of the relevant guidance in the Government's Planning Practice Guidance (PPG), the appeal decision, the appeal papers, the written costs correspondence and all the relevant circumstances.

Reasons for the decision

7. All the available evidence has been carefully considered. Particular regard has been paid to the guidance at 048 of the PPG which refers to the risk of an award in the event that an enforcement notice is not accurate. The main basis of the costs application is that the Council acted unreasonably by issuing an enforcement notice which was concluded, on appeal, to be a nullity.

Conclusions

8. Part of the appellant's costs application alleges that the Council acted unreasonably by failing to hold the enforcement notice in abeyance to allow a planning application to be submitted and processed. However, local planning authorities have a general discretion to take enforcement action when they regard it as expedient. In any enforcement action, the decisive issue for the Council should be whether they have reasonable grounds for concluding that there has been a breach of planning control, and that it is expedient to take such action because the breach would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. The enforcement notice details the reasons why the Council considered that there had been a breach of planning control and why they deemed that enforcement action was necessary. You do not argue that the garage building the subject of the enforcement notice had been extended without the necessary planning permission and the Secretary of State sees no evidence that the Council's decision to take enforcement action was precipitative. Prior to the issue of the notice the Council had refused a retrospective planning application for the development and had provided pre-application advice to your client on three separate occasions. The Secretary of State therefore takes the view that the Council had reasonable grounds for believing that there had been a breach of planning control and for considering it expedient to issue the enforcement notice, when they did.

9. The Secretary of State notes that in this case your client's application for costs was made after the Inspector's appeal decision was issued. You have cited the outcome of the appeal in support of the costs application. Although a decision on a costs application does not follow directly from the result of the appeal itself the Secretary of State has taken into account as a material consideration the basis on which the enforcement notice was found to be a nullity.

10. The Inspector's appeal decision (paragraph 4) stated:

"No periods for compliance with requirements (2) and (3) are stated in the notice. In view of the compliance period for steps (1) and (4) being stated as 3

months, this suggests that the Council may have envisaged a different compliance period for the other two steps but I have no means of knowing whether this was the case as it is not within the four corners of the notice."

The Inspector went on to conclude that because the compliance periods for steps 2 and 3 were missing the notice failed to comply with Section 173(9)² and was therefore found to be a nullity which could not be corrected.

11. Having carefully considered the available information the Secretary of State does not agree with the Council's suggestion that the appellant, who was professionally represented, should have referred to the possibility that the enforcement notice might have been a nullity in his appeal statement. The Secretary of State finds it difficult to escape the conclusion that the onus was on the Council to ensure, at the outset, that the enforcement notice was correctly worded and not technically defective before proceeding to issue it. However, the Inspector's appeal decision clearly concluded that the information missing from the notice rendered it a nullity.

12. In the particular circumstances the conclusion drawn is that the Council acted unreasonably in issuing the enforcement notice (worded as it was). The practical consequence of the Council's error was that the Inspector was unable to consider the appellant's grounds of appeal. As a result the appellant incurred wasted expense in the appeal process. A full award of costs is therefore considered justified.

13. This decision should not be taken to imply any view on the merits of the Council's decision to take enforcement action.

FORMAL DECISION

14. For these reasons, the Secretary of State has decided that a full award of costs, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

COSTS ORDER

15. Accordingly, the Secretary of State for Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 174 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, **HEREBY ORDERS** that Cornwall Council shall pay to Mr David Nicholls his costs of the enforcement appeal proceedings before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 1 of this letter.

16. You are now invited to submit, on behalf of the appellant, details of those costs to Sandra Oram (Senior Development Support Officer) at Cornwall Council with a view to reaching an agreement on the amount. A copy of this letter has been sent to her.

Yours faithfully

S Parsons

STEVE PARSONS

Authorised by the Secretary of State to sign in that behalf

² of the 1990 Planning Act (as amended)