

Costs Decision

Site visit made on 19 June "

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2018

Costs application in relation to Appeal References as follows:

Appeals A – Notice 1 – APP/L3815/C/17/ 3180540 & 3180541

Appeals B – Notice 2 – APP/L3815/C/17/3189998 & 3190006

- 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 Malcolm Smith and Ms Carol Smith against Chichester District Council.
 - The appeals were in relation to a change of use of the land (Notice 1) to general storage use and the erection of a wooden building (Notice 2).
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Decision

1. The application for an award of Costs is refused

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the 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 Appellants

5. It is contended that the items included in enforcement notice 1 (0/27) are items which were included in an earlier notice in 2005, or replacement items to those which were removed from the land following the upholding of that notice. Reference is made to the previous Inspector's variation to the earlier notice which stated '*without prejudice to the generality of the first requirement, remove all items listed in that requirement unless ancillary or incidental to the lawful use of the land for agriculture*'. The appellants contend that the Council acted unlawfully by removing items which were incidental or ancillary to the agricultural use of the land and that the issuing of the later notices were an abuse of their powers.

6. It is stated that most of the items included in notice 0/27 could have been included in the 2005 notice 0/11. Furthermore it is claimed that the items now enforced against are exempt from removal. It is further contended that the wooden shed, the subject of notice 0/28 is a garden shed for which planning permission is not required since it constitutes permitted development.

7. It is argued that the Council has again acted unlawfully; that their actions have led to unnecessary loss and expense in the appeal process and that the Council should, therefore, pay the appellants' full legal costs relating to the appeals against both notices. These costs are quoted as being £3934.68, with disbursements of £29.66. It is also contended that the Council has failed to respond to correspondence from the appellants' solicitor.

The gist of the LPA response

8. The Council indicates that due to the previous enforcement action both the appellants' solicitor and the appellants themselves are aware of the Council's strong objection to the use of the land for purposes unrelated to agriculture. It is stressed that despite the previous enforcement decision and court action the appellants have continued to collect and to keep upon the site goods and items unconnected to agriculture. In addition reference is made to the timber building which has been erected on the land which is another breach of planning control.

9. It is further contended that the appellants' denial of the planning history and their refusal to acknowledge the circumstances of their use of the land has resulted in these appeals and that the claim for costs is not justified. The Council does not accept that it has acted unreasonably in relation to the taking of enforcement action and these resulting appeals.

Assessment

10. In my appeals decisions I have concluded that there have been separate breaches of planning control not related to the previous enforcement notices. I concluded that the requirements of the earlier notices had been contravened by re-introducing some more non-agricultural items and that both the storage use of the land and the new building were unauthorised.

11. From the submissions and from my site inspection, it is my conclusion that the Council identified further non-agricultural items being stored on the land, as well as finding that the new wooden shed had been built for the storage of non-agricultural (materials and domestic paraphernalia). Even if some of these later items had been there since 2005 and/or some had been removed, I do not consider that it was the Council's actions which led to the appeals have to be made in the first instance. Rather it was the actions of the appellants in introducing other non-agricultural items on to the land.

12. Again in my appeals decision I have found that the Council was entitled to enter the land and that the two notices (0/27 and 0/28) were validly and legally issued. In finding new breaches the Council was also entitled to issue the two new notices and equally the appellants were entitled to appeal them. In the overall circumstances of this case I do not consider, therefore, that the Council acted unreasonably. Nor do I consider that their actions led to unnecessary loss and expense for the appellants in the appeal process.

13. In order to be successful, a claim for costs must indicate that unreasonable behaviour by one party has led to unnecessary loss and expense for the other. This has not been the case in these appeals. The application is, therefore refused.

Anthony J Wharton

Inspector