
Costs Decision

Site visit made on 16 September 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Costs application in relation to

Appeal A: APP/B3438/C/20/3249454

Appeal B: APP/B3438/C/20/3249455

Land at Barncroft, Dunwood Lane, Longsdon, Stoke on Trent ST9 9QW

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Andrew Mark Webster and Tracy Webster for a full award of costs against Staffordshire Moorlands District Council
 - The appeal related to condition 4 of planning permission Ref 2350/62T which requires occupation by persons employed or last employed in agriculture at Barncroft.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may 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.¹ Unreasonable behaviour may relate either to procedural matters or substantive matters relating to the merits of the appeal.
3. The appellants consider that the Council has behaved unreasonably and that they have been put to unnecessary expense in having to prepare and present the appeal and seek a full award of costs. The appellants set out a number of reasons to support their costs claims.
4. *The Council not agreeing to a meeting with the appellants or engaging with the appellants' agent albeit at a late stage.*
5. Prior to the service of the notice, the appellants and the Council had engaged in a series of exchanges where the appellants had provided information to the Council. The appellants consider that a meeting would have resolved errors by the Council in applying the wrong test to the evidence and implying terms into the planning condition making it harder to comply. The Council stated that it did not consider a meeting would be helpful as the issues between the parties related to a difference of opinion.

¹ Planning Practice Guidance :Appeals paragraph 030

6. However, given the fundamental differences of view between the parties , the probability of dialogue at this point leading to any mutually acceptable solution was rather remote. The appellants agents were only appointed after the service of the enforcement notice and asked for the notice to be withdrawn.
7. *The Council applied the stricter test of "beyond reasonable doubt" rather than the correct test of "on the balance of probabilities."*
8. The Council clearly set out the reasons both in emails and in their evidence as to why they considered that the appellants did not satisfy the condition namely that the buying and selling of plants did not amount to horticultural use and that the keeping of a modest amount of sheep and chickens was no more than hobby use. I have applied the test of balance of probabilities and have found that the breach of planning control has occurred.
9. *The Council did not appear to understand the subject matter specifically the meaning of terms within the agricultural occupancy condition which led to inappropriate conclusions.*
10. The appellants refer here to a number of evidential matters such as whether the business made a profit, the use of dictionary definitions and the business not being registered at Companies House. However, these are all matters that are considered in my decision letter where I have found that a breach of planning control had occurred. The Council has also explained for example that matters such as whether or not any business was registered at Companies House was a factor but not a determinative factor in deciding to serve the notice. With regard to dictionary definitions, the appellants asked in email exchanges about relevant wording and definitions and the Council supplied the statutory definition for agriculture and in the absence of a statutory definition for horticulture provided a dictionary definition.
11. *The Council did not approach the condition in a benevolent manner*
12. The Council had to take a view as to whether or not the condition was being met following the complaint. It did so based upon the evidence provided and the site visit.
13. *The appellant says that the Council wrongly advised the appellants that at least one of the owners should be employed full time in agriculture.*
14. Whilst the Council did state this in an email exchange, it is unclear as to why this constitutes unreasonable behaviour resulting in unnecessary costs when the appellants case is that at least one of the appellants has always worked full time in the business.
15. Other evidential matters raised in relation to costs include, whether the activities undertaken did fall within the definitions of agriculture/horticulture, the activities being the appellants employment and they were employed in agriculture/ horticulture so there was no breach of planning control. However, I have considered these evidential matters in reaching my decision.
16. *The appellants state that the service of the notice was premature and demonstrates scant regard for Human Rights.*
17. For the reasons stated in the decision letter, I do not consider that the notice was served prematurely. With regard to the Human Rights of the appellants,

the Council states that it chose to serve an enforcement notice rather than a breach of condition notice as the enforcement notice route enabled the appellants the opportunity to appeal. The expediency report also shows that the Council did consider the Human Rights Act and allowed a 12 month period for compliance rather than a shorter period as a result. The appellants also chose subsequently to appeal under ground (b) only which is a legal ground of appeal relating solely to whether the breach had occurred as a matter of fact.

18. *The appellants refer to the action being punitive and disproportionate in the absence of breach of planning control and not of wider benefit.*
19. In terms of enforcement action being remedial rather than punitive, the appellants were informed of why the Council did not consider the condition was being met and advised to get professional advice and were given time to submit supporting evidence. The appellants could have submitted an application for a Certificate of Lawful Use at any time.

Overall Conclusion

20. In the light of the foregoing, I find that in all instances unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated. An award of costs in full or part is not justified and the application fails.

E Griffin

INSPECTOR