



Costs Decision

Hearing Held on 5 May 2021

Site visit made on 6 May 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2021

Costs application in relation to Appeal Refs: APP/R4408/C/20/3249575 (Appeal A) and APP/R4408/C/20/3249576 (Appeal B)

Land off Worsbrough Road, Worsbrough, Barnsley S70 5LN

- 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 Barnsley Metropolitan Borough Council for a full award of costs against Mr Christian Smith and Ms Alice Doran.
 - The Hearing was in connection with appeals against an enforcement notice alleging Without planning permission: The material change of use of land for the siting of a caravan for human habitation, storage of horseboxes, vehicles, plant, equipment, machinery, the laying of hardstanding and erection of walls, fencing and boundary gates to facilitate the unauthorised use over a number of unauthorised vehicular crossings on woodland which is covered by Tree Preservation Orders. ('The Unauthorised Works').
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ advises 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 Council's case is that the appellants have failed to co-operate with the Council; have concealed relevant information and have continued the breach in conflict with national policy. The appellants, it says, failed to exercise due diligence by seeking advice from the Council at the outset. Had they done so by being open about the intended development, they would have been made aware that the site was subject to an extant enforcement notice and the further enforcement action, the subject of this case, would have been avoided. In the meantime unauthorised development has progressed on the site, which the appellants should have known would have little prospect of success.
4. The appellants were not under obligation to contact the Council in advance of acquiring the site. The Council indicates that it affixed copies of the previous enforcement notice and appeal decision at the site, and I am in no doubt that this would have been good practice. The appellants' response was that the previous enforcement notice concerned different development to that which

¹ Reference ID: 16-030-20140306

they were seeking. Whilst it was agreed by the parties, at the Hearing, that the appellants' site access was in fact covered by the previous enforcement notice, the Council had previously set out in its own statement regarding the planning appeal, that the access points referred to in the 2017 notice were in a different location. Furthermore I am not persuaded that the location plan attached to the previous notice would not have been open to misinterpretation in this regard. It is therefore plausible that, assuming the previous notice was seen by the appellants, it was misunderstood as relating to different development. A misunderstanding would not amount to unreasonable behaviour.

5. I have differentiated my findings in this case from those of the Inspector who upheld the previous enforcement notice in relation to the appeal site. It does not therefore necessarily follow that had the appellants been aware of, or chose to take notice of, that decision at the outset, they would have decided not to go ahead with the development.
6. I concur with the point that a lack of due diligence would have put the appellants at risk of developing the site in breach of planning control, which is in fact what happened. Notwithstanding this, I am mindful that the Act makes provision through s73A for a grant of retrospective permission, and through Part VII for planning enforcement that is remedial, not punitive.
7. I acknowledge that the Council feels frustrated about its efforts to resist development on the site seemingly being ignored. However, alongside the enforcement notice, the Council served a stop notice in relation to unauthorised development. The prosecution of that notice would have provided the Council with an appropriate remedy regarding any continuing unauthorised work on the site and concern about increasing difficulty remediating it.
8. In terms of the provision of information by the appellants, a professional agent was employed, albeit retrospectively, and a comprehensive case was made in support of the development, through the submission of a planning application and an appeal against the enforcement notice on the grounds of unreasonable compliance periods. I agreed with the appellants that the ground of appeal against the enforcement notice, in terms of the cessation period for the residential use, was not unreasonable, despite not varying the notice for the reasons given in the main decision.
9. Despite the strength of policies that I found weighing against the development, I also found there to be other key material planning considerations in this case. I do not therefore agree that it can be said that the appeals, both in relation to the retrospective planning application and the enforcement notice, had no reasonable prospect of succeeding. The appellants were entitled to assume that the planning application would be successful.
10. An award of costs is confined to the question of whether a specific party has behaved unreasonably in relation to the appeal. An award would not be justified on the basis of being a deterrent to others acting in a similar way.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Roy Merrett INSPECTOR