
Costs Decisions

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 06 January 2022

Applications A and B: Costs applications in relation to Appeal Ref:

APP/Q3820/C/19/3234453 (Application A) and Appeal Ref:

APP/Q3820/C/19/3234454 (Application B)

Land at Fairhaven, Fernhill Road, Pound Hill, Crawley RH6 9SY

- The applications are 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 applications are made by Mr John Ellis (Application A) and Mrs Sarah Ellis (Application B) for a full award of costs against Crawley Borough Council.
 - The appeal was against an enforcement notice alleging the stationing of three mobile homes.
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Decisions

Applications A and B: Costs applications in relation to Appeal Ref:

APP/Q3820/C/19/3234453 (Application A) and Appeal Ref:

APP/Q3820/C/19/3234454 (Application B)

1. The applications for an award of costs are allowed in the terms set out below.

Reasons

2. The submission on behalf of the applicants was made in July 2020. By letter dated 17 July 2020 the Council was invited to respond. There is no record of any response from the Council.
3. The Planning Practice Guidance 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.
4. Elsewhere in the Planning Practice Guidance it is emphasised that effective enforcement action relies on accurate information about an alleged breach of planning control. The powers available to local planning authorities to obtain that information are set out.
5. The undated expediency report advises that a potential breach of planning control was identified only when officers visited the site in August 2017 in connection with the 2017 application for a certificate of lawful existing use or development (LDC). It appears that the Council's officer experienced a lack of cooperation at a subsequent site visit in March 2018 when access to the mobile homes then present was refused.
6. In June 2018 a further visit to the site was made. On this occasion five mobile homes were positively identified. It is not clear if access was granted to these but the report states that three were occupied, two of which were lawfully so

by virtue of the LDC granted in December 2017. The other two are simply recorded as being unoccupied.

7. There is no obligation on a local planning authority to issue a Planning Contravention Notice (PCN) but in cases like this where landowner cooperation is lacking, it can be helpful to identify if there has been a breach of planning control and, if so, to clarify what it is. No PCN was issued in this case and the notice was issued more than a year after what seems to have been the final visit to the site. In my view, the Council has not carried out an investigation with the rigour necessary to identify the breach of planning control accurately. The Covid-19 pandemic did not occur until well after the notice was served and therefore had no impact on the Council's ability to carry out site visits.
8. The breach of planning control alleged does not follow that recommended in the expediency report. It simply alleges the stationing of three mobile homes. As the applicants rightly point out, this is contrary to established case law. The purpose for which the mobile home/caravan is stationed must be stated in order to ascertain whether there has been a material change in the use of the land. A notice cannot anticipate a future use of the mobile homes which appears to be the Council's position.
9. While there may well have been a breach of planning control, that alleged in the notice is not one that meets the tests established by the courts. The notice is therefore invalid on its face and incapable of correction without injustice to one or other of the parties for the reasons set out in the appeal decisions.
10. Although the issue of a defective notice is not listed in the Planning Practice Guidance among the examples of behaviour by a local planning authority that may give rise to a substantive award of costs (the list is not exhaustive), acting contrary to or not following well-established case law is. It was therefore unreasonable behaviour by the Council to issue the notice as framed and the applicants have therefore incurred wasted expense in making the appeals.
11. The applicants make other criticisms of the Council's case in respect of the identification of the land to which the notice relates and the subsequent attempt to limit that in response to the appeals on ground (b) and inconsistencies regarding the landscape effect of the mobile homes in defence of the Appeal A appeal on ground (a). As I quashed the notice for the reasons set out in the appeal decisions, I did not need to consider these matters and therefore make no comment upon them.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Crawley Borough Council shall pay to Mr John Ellis and Mrs Sarah Ellis, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicants are now invited to submit to Crawley Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Brian Cook

Inspector