



Costs Decision

Site visit made on 23 December 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Costs application in relation to Appeal Ref: APP/N2739/C/21/3272816 118 High Street, Monk Fryston, Leeds, West Yorkshire LS25 5DU

- 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 Mr James Dawson for a full award of costs against Selby District Council.
 - The appeal was against an enforcement notice alleging the carrying out of engineering operations including the removal of trees, depositing of materials, the laying of hard standing and the erection of block work walls for the purpose of creating a tennis court in the garden area to the rear of the property.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (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. "Unreasonable" is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature.
3. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. Furthermore, in order to support an effective and timely planning system in which all parties are required to behave reasonably, an Inspector may on their own initiative make an award of costs, if he or she considers a party has behaved unreasonably resulting in unnecessary expense.
4. In this case, the appellant contends that the Council has behaved unreasonably by issuing an enforcement notice following the refusal of planning permission and prior to a decision being made with respect to an appeal against that refusal. It is my understanding that the enforcement notice was drafted following the refusal of a second planning application for the tennis court and associated operations. However, there is a further procedural matter which amounts to the unreasonable behaviour on the part of the Council.
5. As set out in the main decision, the time for compliance with Step 1 of the notice is *"Immediately from the date on which the notice shall take place"*.

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

The periods for compliance with the notice start to run from the date when it comes into effect. Since a compliance 'period' must be specified under s173(9) of the Act, a notice which does not contain any period, or does not set out a time which could amount to a period, is likely to be a nullity. The courts have held² that 'immediately' is not a period for the purposes of s173(9) and a failure to specify a compliance period would make a Notice a nullity.

6. Consequently, the Council's requirement for immediate compliance constitutes a failure to specify an actual period of time within which the first requirement of the notice should be complied with. This means that the enforcement notice is a nullity and no further action can be taken with respect to the appeal against it. Therefore, the Council has behaved unreasonably from a procedural point of view, resulting in the appellant incurring unnecessary and wasted expense in submitting an appeal against the enforcement notice.
7. With respect to the issues raised by the appellant, the enforcement notice was served following the refusal of a second planning application for the tennis court. Because the development had been refused planning permission twice and had resulted in material harm as set out in the two sets of reasons for refusal and also set out in the reasons for issuing the notice, the Council was not unreasonable in its actions.
8. Although the Council could have waited the outcome of the planning appeal before serving the notice, a significant period of time had lapsed since the breach of planning control had occurred and the harmful effects of the development were continuing. As such I can see that it was expedient to serve the notice when it did. In addition, it is clear to me that the Council had given consideration to whether the breach of planning control could be overcome by other means and determined that there was no other option open to them. Again, I do not find this to constitute unreasonable behaviour.
9. On finding out that the planning appeal had been submitted, the enforcement notice could have been withdrawn by the Council, but the Council decided not to do that in the light of the ongoing harm caused by the unauthorised development. This is not unreasonable in these circumstances.
10. The Council has stated that the appellant has not been put to any unnecessary expense by the service of the enforcement notice because the appellant would have had to prepare a statement and compile documentation for the appeal against the refusal of planning permission. Since the enforcement notice has been appealed on ground (a) and the submission on ground (a) and supporting documentation is largely taken from the section 78 appeal documents, there may not have been a great deal of time and expense involved. However, as I have set out above, the notice served by the Council is a nullity and 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

11. 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

² R (oao Lynes & Lynes) v West Berkshire DC [2003] JPL 1137

Selby District Council shall pay to Mr James Dawson the costs of the appeal proceedings described in the heading of this decision only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Selby District, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A A Phillips

INSPECTOR