

Costs Decision

Application for Planning Authority Against Appellants

Site Inspection on 18 May 2022

by **Graham Self MA MSc FRTPI**

Inspector appointed by the Secretary of State

Decision date: 4 July 2022

Costs Application Relating to Appeals References APP/X0360/C/21/3289003 & 3289004

Site at: The Coombes, Coombes Lane, Barkham, Berkshire RG2 9JQ

- The application was 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 was made by Wokingham Borough Council against the appellants, Mrs Candice Jules and Mr Dean Jules.
 - The appeals by Mr and Mrs Jules were made against an enforcement notice issued by the council which alleged: "Without planning permission the material change of use of the land for storage purposes".
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Decision

1. The application for an award of costs is allowed, and a Costs Order is set out below.

Summary of Arguments

For the Planning Authority

2. The council's application was based on two main grounds, one relating to the appeal process, the other relating to the merits of the appeal. As regards process, the council say that it was unreasonable for the appellants to introduce, at a late stage in the appeal proceedings, a claim that the enforcement notice was not properly served on everyone with an interest in the land. There was no ground (e) appeal and this claim was made only in the appeal statement, and without any corroborating evidence. The late claim caused the council additional work, time and cost.
3. As regards the appeal itself, the council say the appellants' claim that there has been no breach of planning control and that they do not have knowledge of the breach is not understandable, as it is clear that the appellants deposited the items on the land in order to comply with an enforcement notice and court order requiring them to be removed from the adjacent site. The argument that the items are only on the land temporarily or in transit is not supported by the length of time the items have been on the land. There has been ample time for the items to be removed since the council wrote to the appellants in March 2021. The council has been put to unnecessary expenditure in having to deal with the appeals and the council seeks its costs in doing so.

For the Appellants

4. In response, the appellants (through their agent)¹ have contended that the planning authority's application has no basis, is unjustified, and is technically defective. On the procedural point, a procedural application for costs cannot be made against matters which are not procedural. The council's claim relating to a ground (e) appeal is without basis as no such thing has happened. Time and work could not have been spent on a ground (e) appeal when no ground (e) appeal had been made or would be considered by the inspector. To highlight defects in the enforcement notice is not to make a ground (e) appeal.
5. The appellants also say that the substantive application for costs is without basis. It suggests that the use of the right of appeal was itself unreasonable, which is clearly incorrect, and that the council should not be subject to any scrutiny; this is not what the costs guidance intends. No evidence has been provided showing what additional time or cost has been unreasonably created. It is reasonable for the appellants to highlight that they do not consider that placing material on land as part of everyday forestry working does not amount to a material change of use of the land.
6. Moreover neither the original notice nor the council's statement provide any actual evidence of what has been alleged. The council's photographs merely show different things at different times, including other people's waste, or items necessary for the appellants' forestry work. No pictures appear to show any allegedly offending items over any long period of time. The idea that clearing other people's waste amounts to a material change of use of the land worthy of being enforced against is egregious. The only items on the land over a period of time are items necessary for forestry working.
7. There was every reason to lodge an appeal and nothing unreasonable in doing so. The work involved in addressing these matters is normal and typical of any appeal. The appellants have not engaged in any unreasonable behaviour and the council's costs application has no merit.

Assessment and Reasons

8. 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 or wasted expense in the appeal process.
9. In their argument against the enforcement notice, the appellants have contended in essence that although they did not own the access track, they had a right of access along it, and that when the building on the adjacent site was "deconstructed" and removed, part of the removal process involved "staging" dismantled materials onto the access track before they were taken away. The appellants have stated that there have been a number of occasions when they have placed items on the land within the red line but only temporarily as part of a process of taking materials away or bringing materials to their land.
10. As I have explained in the appeal decision, the appellants' claim relating to the use of the red-edged land as a "temporary staging post" is misguided, and the claim that they were not responsible is in my judgment spurious. The items I saw had obviously been on the land for a considerable time. Their presence was not merely incidental to the use of the land for access purposes or to the use of the surrounding woodland. Even if some items have been moved from the land

¹ For the purposes of this decision the appellants and their agent are treated as one joint body.

after a time, the fact remains that a material change of use of the land has occurred.

11. One of the appellants' contentions was that the notice was not properly served on all persons with an interest in the land. Although ground (e) of Section 174(2) (under which it can be claimed that copies of an enforcement notice were not served as required by the Act) had not been pleaded, this part of the appellants' case raised arguments which amounted to an implied ground (e). In these circumstances it is understandable that the council considered it necessary to respond. Indeed, the council could have been open to criticism for failing in their duty if they had not responded, and that in turn made it necessary for the council to investigate matters of ownership and occupation.
12. The appellants' suggestion that since ground (e) was not pleaded it would not be considered by an inspector is over-simplified. Although inspectors are not obliged to consider grounds not pleaded, it may be necessary in the interests of natural justice for inspectors to consider such grounds where they are clearly implied in representations. Comments for the appellants show that they were aware of this. The way the appellants raised and argued issues relating to appeal grounds which had not been pleaded, and then insisted that the grounds had not been pleaded so the planning authority should not have responded, was unreasonable behaviour.
13. As for the appellants' use of the right of appeal, the general principle applying here is that the right of appeal should be used reasonably. From all that I have seen and read on this case, it is clear to me that the appellants, evidently advised by their agent, have acted perversely in contending that items were only placed on the appeal site as part of a temporary or "in transit" activity. They must have known how long the use of the land had been going on for, and must or should have realised the falsity of the argument about a temporary 28-day use or about items being in transit. The claim that items such as windows, cupboard doors, a stainless steel sink, flooring frame, a shower tray and rubble were on the land for "everyday forestry purposes" is ludicrous, and a further indication of unreasonable behaviour.
14. As mentioned in my decision on the appeals, according to a statement submitted for the appellants after my site inspection, the appellants understand that all of the materials resulting from the demolition of the building on the adjacent land "are no longer on site", having been "moved on as swiftly as possible by their owner". The agent's use of the phrase "the appellants understand" strikes me as deliberately trying to separate the appellants from a happening at the appeal site of which in reality they are well aware. Be that as it may, if indeed those materials are no longer on the appeal site it adds to the appellants' unreasonable behaviour, since it indicates that the materials could have been removed long ago, thereby avoiding the need for enforcement action and saving time and costs for all involved.
15. In summary, I find that the appellants behaved unreasonably by pursuing the appeals and in the way they pursued the appeals. As a result the council were caused to incur expenditure which should not have been necessary. Therefore the council's application for costs succeeds and an award of costs is made. The details of how much time and cost was incurred by the council in responding to the appeal or to specific aspects of it are not for me to determine.

Costs Order

16. 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 Mrs Candice Jules and Mr Dean Jules shall pay to Wokingham Borough Council the costs of the appeal proceedings described in the heading of this decision.
17. Wokingham Borough Council is now invited to submit to the appellants Mrs Candice Jules and Mr Dean Jules, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount thereof. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

G F Self

Inspector