

## Costs Decision

### Application for Appellants Against Planning Authority

Site Inspection on 18 May 2022

by **Graham Self MA MSc FRTPI**

Inspector appointed by the Secretary of State

Decision date: 4 July 2022

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### 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 on behalf of the appellants, Mrs Candice Jules and Mr Dean Jules, against Wokingham Borough Council.
  - 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 refused.

### Summary of Arguments for Appellants<sup>1</sup>

2. An award of either full or partial costs was applied for on a number of grounds. The appeals were unnecessary. The planning authority served a defective notice and failed to substantiate its case with any reliable evidence. The matters raised were irrelevant. The notice is unclear and contradictory, sought to target the appellants rather than the site owners, and created a deemed consent for development which the council had stated it sought to prevent.
3. Various more specific points for the appellants were set out under sub-headings as summarised below.

#### Service

4. The notice was not served on owners whose interests were similar to the appellants, and others had been denied any right to appeal. This had created prejudice and showed the council's unreasonable approach. No copy of the notice was displayed on the property.

#### Red Line Plan

5. Land included within the red line plan had not been involved in an alleged breach of planning control, so should never have been subject to enforcement action. This had happened with a previously withdrawn enforcement notice, which the council had accepted was indefensible. The idea that the larger area was

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<sup>1</sup> For the purposes of this decision, I have decided that it is not necessary to summarise the council's responding arguments.

included to catch a possible future breach of control was unreasonable since enforcement action was not to be taken against hypothetical breaches which have not yet taken place.

**Failure to produce evidence to substantiate its case**

6. The council did not properly investigate points in its case before making unsubstantiated allegations. The appellants do not own the appeal site or the majority of the material or items referred to by the planning authority. The authority's case is an array of unsubstantiated allegations. No effort was made to contact other landowners or serve them with a copy of the enforcement notice. No planning contravention notice was issued. The quality of the council's evidence is poor and includes photographs of items not on the appeal site. The council has made extensive use of documents and other material relating to unrelated past proceedings. Such an approach is inappropriate and unreasonable.

**Vague, generalised or inaccurate assertions unsupported by objective analysis**

7. The council's main case is about the use of the land for storage, but precise details are unclear, vague or generalised. The photographic evidence is not dated and does not establish a timeline for the existence of any specific items. Many of the items are used for forestry purposes, for the storage of which the enforcement notice would grant deemed consent. The notice unreasonably makes vague and inaccurate assertions. The council has jumped to conclusions not based on fact.

**Misunderstanding of generally accepted principles of law or guidance**

8. The council's stated aim of seeking to have all items removed from the woodland conflicts with the actual enforcement notice, which exempts items legitimately required for forestry and so would grant permission for such a use. The council has apparently misunderstood the law and has tried to invent a misleading interpretation of its own enforcement notice at statement of case stage. Amendment of the notice to allow for this would cause prejudice and be unreasonable.

**Unnecessary or wasted expense incurred**

9. The appellants have had to appeal to clarify a confusing and defective notice, and to protect their rights. The appellants have been subject to aggressive and unreasonable attack. Had the notice not been defective the appeals would not have been necessary. The appellants have had to contend with false assertions and unreasonable threats that they would be held responsible for items which do not belong to them. If the council had taken note of these points earlier the appeals would not have been necessary. The council's behaviour was similar to that described by Mr Justice Ritchie in the High Court when he directed the council to cease their aggressive and unreasonable approach to the appellants, and engage in mediation and constructive discussion. The enforcement notice was issued only hours after the judge's directions, and seems to be yet another attempt to obstruct the appellants' lawful right to undertake their forestry enterprise.

**Assessment and Reasons**

10. The assessment below is set out using the same sub-headings as in the appellants' costs application.

11. 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.

**Service**

12. It was not essential for the council to serve copies of the enforcement notice on all those with an interest in the land subject to the notice. As the council has pointed out, Section 172 of the 1990 Act refers to those with an interest which in the opinion of the planning authority is materially affected by an enforcement notice. Section 172 does not require an enforcement notice to be publicised by on-site advertisement. The fact that the notice was not served on all such parties and was not advertised on the land was not unreasonable behaviour.

**Red line plan**

13. As mentioned in my decisions on the appeals, I can understand why the council defined the enforcement notice site to include a wider area than just the land where items or materials were being stored, to prevent enforcement action being frustrated by materials being moved around within the same parcel of land. The area within the red line could also reasonably be regarded as a planning unit. A broadly comparable circumstance might be an enforcement notice directed at a breach of planning control occurring within part of a residential plot - the plan for such a notice would typically cover the whole plot. This aspect of the notice was not caused by "poor drafting" as alleged by the appellants and was not unreasonable.

**Failure to produce evidence to substantiate its case**

14. The general thrust of the appellants' arguments under this heading is that it was unfair and unreasonable to hold the appellants responsible for items on the enforcement notice site. In my view it was not unreasonable for the council to judge that the appellants were responsible for the breach of planning control enforced against, and to take enforcement action without first serving a planning contravention notice. As noted in the appeals decision, the appellants have stated that they placed all sorts of material on the site. The enforcement action put the onus of proof about responsibility on the appellants but that is normal when an enforcement notice is issued; and in my judgment the appellants have not discharged this onus. Nor was it unreasonable for the council to refer to recent history as part of their evidence.
15. The photographs submitted as evidence by the council lack points of reference identifying the location, but other evidence, including what I saw during my inspection, meant that it was not necessary for me to rely on photographs as the sole source of information. Moreover, what I saw confirmed that although some details varied over time, the photographs provide a reasonable indication of the way the site has been used.

**Vague, generalised or inaccurate assertions unsupported by objective analysis**

16. In order to show that a material change of use to use for storage had occurred in this case, it was not necessary for a "timeline" to be established for the presence on the land of any particular item or items. As I have explained in the appeal decisions, the fact that some items may have only been on the land for a short time is irrelevant. The logic put forward for the appellants in this respect is flawed - it seems to be based on the kind of thinking which would treat, say, a permanent car park where individual vehicles were only parked for short periods as being some form of temporary use. It is the use of the land which is relevant, and in this instance the use enforced against had clearly been going on for far

more than the 28 days which might have been permissible as a temporary use under the Town and Country Planning (General Permitted Development) Order.

17. The enforcement notice did not precisely specify the items stored on the land. It would not have been practicable to do so. The general indication given in the notice was in my view adequate and capable of reasonable interpretation.

**Misunderstanding generally accepted principles of law or guidance**

18. The appellants' arguments under this heading are mostly directed at the way the enforcement notice is constructed, with particular reference to the requirements. As has been pointed out for the appellants, the exclusion of items "legitimately required for forestry" has created the risk of granting a planning permission under Section 173(11) of the 1990 Act, but the effect of this is likely to be less than suggested for the appellants since the use of any land for agriculture or forestry does not normally involve development. Any possible effect would also depend on whether a genuine forestry use were to be carried on. I note the comment that injustice would be caused if the notice were to be amended by removing the reference to items legitimately required for forestry: I am not making any such amendment.

**Unnecessary or wasted expense incurred**

19. The appellants' main contention here is that they have had to deal with an aggressive and unreasonable attack on them based on false allegations, and with unreasonable threats that they would be held responsible for something for which they were not responsible. As will be apparent from my decisions on the appeals, and for the reasons discussed in those decisions, I do not consider that the allegations in the enforcement notices are false or unreasonable or unduly aggressive or threatening.
20. Although planning authorities should generally where feasible seek to explore other alternatives before issuing an enforcement notice, the council warned the appellants about the possibility of enforcement action in March 2021; and in view of both the background history and planning aspects such as the nature conservation interest of this area, I can see why the council felt that by November 2021 it was appropriate to issue the notice subject to the appeals. After all, appellants who had been found to be in contempt of court and had been argumentative in correspondence with the council could hardly expect to be perceived as likely to be reliably co-operative or open to mediation. Bearing these points in mind I do not find the timing of the enforcement action unreasonable.
21. I have noted and taken into account the comments for the appellants about what Mr Justice Ritchie said in the High Court during past proceedings. In accordance with my duty, I have made my own independent judgment of the issues arising in this case based on the evidence before me, both written and from my inspection.

**Conclusion**

22. Taking all the above points into account, I judge that in pursuing the enforcement action against the appellants, the council did not behave unreasonably. I conclude that the appellants' application for an award of costs does not succeed.

*G F Self*

Inspector