
Costs Decision

Hearing Held on 12 April 2022

Site visit made on 12 April 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13th July 2022

Costs application in relation to Appeal Ref: APP/R4408/C/19/3223190 Land to the rear of Cliff Lane, Brierley, Barnsley S72 9HR

- 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 D Connor.
 - The hearing was in connection with an appeal against an enforcement notice alleging the carrying out of operational development to provide caravan bays.
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Decision

1. The application for an award of costs is refused.

Preliminary Matter

2. The Council applies for its costs of the appeal proceedings against the appellant in the case, Mr Connor. The appeal was considered at a Hearing on 12 April 2022 together with two connected appeals also made by Mr Connor concerning development at the same site. The Council confirmed at the Hearing that their costs application was restricted to the first appeal ('Appeal A', in my substantive decision letter).

The submissions for the Council

3. The Council's application is made on both procedural and substantive grounds. The Council refers to the appellant having omitted to reveal his 'true intentions' in relation to the site, and having continued to develop it following the service of, first, a temporary stop notice and, subsequently, a Stop Notice served alongside the enforcement notice with which the substantive appeal was concerned.
4. The Council submits that mobile homes have been brought onto the land in the period before the appeal was heard, evidencing, they say, deliberate and wilful actions by the landowner to establish the site to the detriment of nearby residents and the local area.
5. *Procedurally*, the Council contends that unreasonable behaviour has been demonstrated by the appellant's lack of co-operation, providing information shown to be manifestly inaccurate and deliberately concealing relevant evidence. In support of these contentions the Council says that the appellant has continued to develop the site whilst prohibitive legal notices have been in place.

6. *Substantively*, the Council say that the development is clearly not in accordance with the development plan and the appeal is likely to have no prospects of success.
7. The Council say that the appellant's behaviour has caused wasted unnecessary and expense by way of site visits, investigations and defending appeal proceedings.

The response by Mr Connor

8. The Council has a range of powers to address unauthorised development, and the planning system accepts retrospective applications. No evidence is supplied by the Council to substantiate their claims that any information has been manifestly inaccurate or deliberately concealed. The Council have not said what the appellant was asked or when that might have resulted in revealing his 'true intentions': no PCN or requisition for information was ever served.
9. As to the substantive claim, the Council has failed to have proper regard to the other material considerations in support of the development and do not assert that the appellant has failed to substantiate his case.
10. As to the extent of any wasted costs, the appeal is linked with a section 78 appeal for which no costs are being sought, and most of the Council's submissions rely on the section 78 appeal with the statement of case for the enforcement appeal being very brief.

Reasons

11. Parties in planning appeals normally meet their own costs, and all parties are expected to behave reasonably. An award of costs may be made where a party has behaved unreasonably and this behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
12. Thus it is important to recognise the scope of the costs regime, which exists to ensure timely and substantiated cases during appeals. It does not extend to marshalling the behaviour of participants outside of the appeal process or to considering whether there have been (and still less any consequences of) any breaches of Stop or other notices that may be relevant to the appellant or to the appeal site, for which other remedies may exist.
13. In respect of its procedural case, the Council relies on some of the bullet points found in a list of examples of procedurally unreasonable behaviour given by the Planning Practice Guidance (paragraph: 052 Reference ID: 16-052-20140306). The list is not given in isolation, but relates to the requirement for appellants to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeal process. It is not suggested that the appellant has not met any appeal deadlines or failed to comply with any appeal requirements. Instead the Council relies on factors that are largely extraneous to the appeal process.
14. The Council's concern, as expressed in their costs application, is that works to develop the site continued despite notices having been served and with the apparent intention of making it more difficult to remove unauthorised development by the time the appeal came to be determined. These are matters relevant to the Council's substantive case on whether the development was intentionally unauthorised (not, as it happens, raised in its reasoning for

issuing the present enforcement notice) but even where warranted, and where carrying other resource implications for the Council, they do not amount to procedurally unreasonable behaviour causing wasted appeal costs. An enforcement notice having been served, those appeal costs would have been necessarily incurred if the notice was appealed against, no matter the situation on the site.

15. Substantively, costs may be awarded where an appeal (or ground of appeal) has no reasonable prospect of succeeding. My decision on the substantive appeals indicate that this was not the case here. Although the development is contrary to the development plan for the area, sufficient material considerations indicating a different decision were advanced in this case. The appeal was not substantively unreasonable and has caused the Council no wasted expense.
16. Any award of costs, whilst not deciding the amount, would need to specify whether it relates to the whole or part of the costs of the appeal. Here, where the costs application is made in respect of only one of three appeals that have all been linked and substantively dealt with together, I do not discern any significant costs that have related to the Appeal A appeal alone, the Council's substantive case having been mainly made in relation to the section 78 appeal. Although this may have given the Council some cause to reflect on the proportionality of enforcing any award had I granted the application, this is not a reason for refusing an award of costs. Nonetheless I refuse the application for the reasons given.

Laura Renaudon

INSPECTOR