



Costs Decisions

Inquiry Held on 25,27,28 & 29 July 2022

by **K R Saward Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 23 August 2022

Land South of Redlands, Hovefields Drive, Wickford, Essex SS12 9JD
Costs application in relation to Appeal Refs: APP/V1505/C/20/3264991, APP/V1505/C/20/3264996, APP/V1505/C/20/3264998 & others

- The applications are made by Basildon Borough Council for a full award of costs against the appellants listed in Appendix 1-3.
 - The Inquiry was in connection with appeals against three enforcement notices alleging:
Notice 1 - the material change of use of the land for the storage of caravans;
Notice 2 - the material change in use of the land to the stationing of caravans for residential occupation; and
Notice 3 - operational development consisting of (i) the importation of hard-core, scalings and associated material, the levelling of imported material (ii) the laying of additional area of hardstanding, creation of roadways, access routes (iii) the creation of subdivided plots by way of the erection of fence posts, fence boards and fencing.
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Decisions

Notices 1 and 3

1. The applications are refused.

Notice 2

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

Procedural Matters

3. The Council issued three enforcement notices. Notices 1 and 2 are dated 4 December 2020 and directed at a material change in use of the land. Notice 3 had in fact been issued first on 29 November 2020 against unauthorised operational development.
4. Appeals were brought against all three enforcement notices. There were originally 13 appellants who appealed against each notice making a total of 39 appeals. At the start of the Inquiry the appellants' agent confirmed that the appeals were withdrawn for Mr C Anderson and Mr F Anderson. This reduced the number of appeals to 33.

The submissions for Basildon Borough Council

5. In the written costs' application, the Council argues that the acting agent, on behalf of the appellants, has behaved unreasonably by using the planning appeals process to challenge the local planning authority and Council on matters that are not pertinent to the appeals under consideration. This has been the essence and substance of the appellants' case.

6. This relates to questions and concerns on the Council's enforcement register maintained under section 188 of the Town and Country Planning Act 1990 ('the 1990 Act') and previous enforcement notices. It was made clear at the Inquiry by the Inspector that this was not a matter that could be taken into account under the Inspector's jurisdiction. As such the appellants' agent has not adhered to the Inspector's direction.
7. The appellants have continued to make accusations that there may be defects or omissions in the Council's register of enforcement notices. The relevant notices are contained in the register. There is nothing in the Act to indicate that these perceived deficiencies provide a route to question the validity of the notices themselves. If these matters were to be pursued, it must be through other means. The attempt to question the Council's enforcement register and earlier enforcement notices at a section 174 appeal so persistently, and with such large volume of documents, is unreasonable behaviour.
8. Furthermore, the appellants' argument that the unauthorised development is lawful in the absence of a valid enforcement register and enforcement notice is a serious misinterpretation. It is unreasonable to put forward this inadequate argument, which formed the principal basis for the appeals and caused considerable wasted time and expense.
9. In addition, the appellants have overloaded the appeal process unnecessarily by volume of documents and information, often largely or entirely irrelevant. The late provision of information is also an unfortunate and unreasonable feature of the appellants' conduct of the case. The documentation received is largely repetitive and incoherent, and the Council has been put to the expense of dealing with or processing a large amount of material which was irrelevant and entirely inadequate to justify the argument put forward. In some instances, documentation has lapsed the deadlines set which has not given the Council opportunity to consider.
10. In conclusion, the Council considers it unreasonable for the appellants to ambush it with an abundance of documents and pursue a section 174 appeal on the grounds of invalidity/nullity of the enforcement register and previous enforcement notices.
11. Further, because of the focus on points which cannot properly be taken in this Inquiry, the appellants have failed to present a case based on reasonable evidence in support of the ground (a) appeal. The failures in that respect are manifest, startling and unreasonable.
12. The Council submitted orally that the appellants failed to set out their case at the start. The agent has endeavoured through the back door to vent his complaints despite the Inspector's warning. Reference to previously developed land was potentially important and only raised in closing. Homelessness of his clients was an important point but only one appellant appeared. On a substantive basis the agent continued to pursue an unreasonable case. The way the case was presented to the Council and the Planning inspectorate was not reasonable and the type of conduct the rules were made to prevent.

The response by the appellants

13. The appellants' agent responded orally to the application for costs.

14. The appellants do not question any of the enforcement notices or anything else. What the appellants are querying is that the Council has a register entry that grants planning permissions. The Inspector is entitled to take that into account as per *Trevelyan v SSETR* [2002] EWCA Civ 266 and the publication of Bennion, Bailey and Norbury on Statutory Interpretation, 2020.
15. The appellants have no issues with the enforcement register but the way it is maintained. The appellants do query the validity of the enforcement notices for a material change of use (Notices 1 and 2). The only change the Council can make to its register is to withdraw the enforcement notice or vary the requirements. The appellants had great difficulty in deciphering the word 'importation' in Notice 3. There are issues with the enforcement notices.
16. If the Council granted planning permission in its enforcement register then it is reasonable to say it. The Council needs new staff if they cannot read their own register.
17. The volume of documents supplied by the Council is the same height as the appellants. No deadlines were missed.
18. The appellants are not pursuing an invalidity argument. The appellants are saying that the Council granted planning permission and registered it. The Council has no evidence to the contrary.
19. The appellants disagree with the Council's final point that there has been a failure to present a reasonable evidence based case on ground (a).

Reasons

20. Irrespective of the outcome of the appeal, costs may only be awarded where a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process, as set out in Paragraph 030 of the *Appeals* section of the national Planning Practice Guidance ('PPG').
21. The application seeks an award on procedural and substantive grounds relating to the issues arising from the merits of the appeal.
22. Paragraph 053 of the PPG explains that an appellant is at risk of an award of costs if the appeal had no reasonable prospect of succeeding.
23. In considering the application for costs, it is appropriate to set out the position with regard to the three enforcement notices as that provides the context in which the application should be determined.
24. Notice 1 alleged an unauthorised change in use for the storage of caravans whereas Notice 2 alleged an unauthorised change in use for the stationing of caravans for residential occupation. They were issued in the alternative.
25. Even though it must have become abundantly clear to the Council that caravans were not being stored, not least because of legal proceedings instigated by the Council against occupation of the land, it still did not withdraw Notice 1. Instead, it was left to the start of the Inquiry for the Council to announce that it did not wish to pursue Notice 1. For that reason, no evidence was heard with regard to Notice 1.

26. It was not unreasonable for the appellants to appeal against Notice 1 which the Council itself chose, late in the day, not to pursue. The Inquiry focussed on Notices 2 and 3.
27. A Pre-Inquiry Meeting ('PIM') was held on 25 January 2022. It was attended by the appellants' agent and representatives of the Council.
28. Notice 3 made three separate allegations against operational development. It contained numerous errors which I flagged up at the PIM. The appellants' agent highlighted differences in the boundaries shown on the accompanying map compared with those in Notices 1 and 2 and the duplication in the requirements. In spite of these early warning signs the Council persisted to argue that the notice could be corrected. That was so despite revisions to the plan widening the scope of the notice and other amendments being required.
29. When Notice 3 was discussed at the start of the Inquiry the Council subsequently requested deletion of the first allegation. Notably, the second allegation was directed at 'additional' hardstanding indicating that some hardstanding was lawful but without identifying where this additional area was located. It transpired that the word 'additional' was erroneous and all the hardstanding was unauthorised. Notice 3 was flawed to such an extent that I found it incapable of correction without injustice arising to the appellants and it has been quashed.
30. The appellants cannot have acted unreasonably in appealing against Notice 3 when it has been quashed even though they pursued points besides the drafting of the notice. If anything, I consider that the Council should have reflected on the corrections that would be needed much earlier in the process. It was perhaps all the more surprising that the Council persisted with the defective notice given that Notices 1 and 2 required removal of the same operational development.
31. It follows from the above that it would be unjust to penalise the appellants for the costs arising from the appeals against Notices 1 and 3.
32. In terms of Notice 2, the appeals were originally brought on all seven grounds of appeal. It was confirmed at the PIM that the ground (f) appeal was limited to Notice 3 (and subsequently withdrawn). This left six grounds of appeal. When the appeals were lodged there was scant information, if any, on the actual grounds of appeal. By the time of the full statement of case, all available evidence should have been submitted. This was discussed at the PIM and I agreed that the appellants could submit a single indexed and consecutively numbered bundle of documents in electronic and hard copy format by a prescribed date. Within this timeframe, the Inspectorate was presented with ten volumes of documents. The appellants' agent then produced ten proofs of evidence, the appendices to which ran to a further seven volumes of documents composed of some 1736 pages.
33. Despite this wealth of documentation, it was not altogether clear what arguments were being pursued on some grounds. For instance, there was no information on why the development was considered immune from enforcement action under ground (d). Prior notice of the appeal on ground (e) was the information extracted at the PIM. It should not be left to the Inquiry itself for the nature of the case to unfold.

34. Much of the appellants case, documentation and Inquiry time focussed on the ill-conceived notion (raised under ground (b)) that planning permission somehow existed by virtue of errors in the Council's register of enforcement and stop notices held under section 188 of the 1990 Act. No authority for such a supposition was brought. There was an error in the register where it gave the incorrect northing and easting co-ordinates. However, it was unclear how the presumption of regularity could possibly translate to the grant of unconditional planning permission for the appeal site.
35. On ground (c) the appellants had wholly misunderstood and misapplied section 173(11) by maintaining that planning permission was granted for the development through entries in the register. The argument over historic enforcement notices granting planning permission was confused and lacking in any credence or support.
36. There was no evidence that different enforcement notices were served from those issued. Whilst the agent claimed not to be arguing that the enforcement notices were invalid that is the opposite to the position taken at the PIM and the arguments which were in fact pursued.
37. Despite my warning at the PIM that the focus must be on the grounds of appeal and the Inquiry was not the forum to air grievances over complaints to the Council, the agent repeatedly raised such matters. He persisted in taking issue over the way in which the Council manages its register and how information is recorded. His proof of evidence contained irrelevant details including enforcement and clearance costs associated with the Dale Farm traveller site among others and why a Local Plan had not been developed.
38. No argument as such was advanced on ground (d) and yet the ground was not withdrawn even though I explained the nature of a ground (d) appeal both at the PIM and the start of the Inquiry. There was no evidence beyond mere supposition for the case under ground (e) that there had been non-compliance with the service requirements for Notice 2.
39. The burden of proof on the legal grounds of appeal i.e., (e),(b),(c) and (d) fell on the appellants. The case fell substantially short of discharging that burden.
40. There was a case to be heard on ground (a) and the deemed planning application. The development was agreed to be inappropriate development in the Green Belt which, according to national policy, should not be approved except in very special circumstances. Yet, the agent clearly had little knowledge of the appellants' gypsy status and personal circumstances. His evidence was generalised about the appellants being homeless and quickly unravelled under cross-examination. He simply did not know what their current circumstances are. The agent conceded that the only appellants who had a case to demonstrate 'very special circumstances' were the Cleary's and yet the case on ground (a) was still pursued throughout by nine others.
41. The exception was Mr Cleary who participated in the Inquiry himself but his case relied upon medical evidence which, sadly, had not been produced during the appeal process. As it was, such little positive evidence was put forward to outweigh the acknowledged Green Belt harm even for a temporary permission and/or grant of part only.

42. Overall, the case being argued was poor and lacking in any real substance.
43. Even the appeals on ground (g) seeking an extension of the compliance period failed to explain why one month did not suffice to remove the hardstanding when the occupation by the appellants had already ceased and some remedial works undertaken. It appeared little more than an attempt to secure the equivalent of a temporary planning permission until the Council sorts out its draft Local Plan.
44. The volume of documentation submitted for the appellants is extraordinary when so little of it has direct relevance to the grounds of appeal. It is no exaggeration to say that the Inquiry was inundated with irrelevant material which the Council needed nonetheless to sift and address at cost to the public purse. It was not a reasonable approach for the appellants take.
45. I am not without sympathy for the appellants who have appealed, at cost, against Notices 1 and 3 when only Notice 2 has been upheld. However, the case on Notice 2 suffered from unsustainable arguments on legal grounds and were otherwise severely lacking in detail on matters pertinent to the appeals. This causes me to conclude that the appeals had no real prospect of success. Furthermore, the way in which the appeals were conducted procedurally was not reasonable. Clearly, the Council has incurred costs in pursuing Notice 2 which has been upheld and could have been avoided.
46. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in part with regard to Notice 2 and that a partial award of cost is justified. I shall exclude Mr Cleary and his wife from the award because, even though their evidence did not suffice, they were able to show personal circumstances which may have been capable of outweighing the harm but that was not so for the others. For the avoidance of doubt, such costs awarded do not include matters pertaining to the section 106 planning obligation which was raised late by the Council and which I consider could have been resolved with more time.

Costs Order

47. 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 Mr Brian McGinley, Ms B McGinley, Mr Jerry Anderson, Ms Bridget McDonagh, Mr C McDonagh, Mr John McDonagh, Ms D Stokes, Mr Patrick Collins, and Ms Leah Foley shall pay to Basildon Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in connection with Notice 2 (dated 4 December 2020), but excluding those incurred in relation to the section 106 planning obligation; such costs to be assessed in the Senior Courts Costs Office if not agreed.
48. The applicant is now invited to submit to the above-named persons, 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.

KR Saward

INSPECTOR

Appendix 1

List of those who appealed against Notice 1

1	Mr C Anderson	Plot 1	APP/V1505/C/20/3265043	Withdrawn
2	Mr B McGinley	Plot 3	APP/V1505/C/20/3265064	
3	Ms B McGinley	Plot 3	APP/V1505/C/20/3265065	
4	Mr F Anderson	Plot 4	APP/V1505/C/20/3265034	Withdrawn
5	Mr J Anderson	Plot 5	APP/V1505/C/20/3265027	
6	Ms B Mcdonagh	Plot 7	APP/V1505/C/20/3264991	
7	Mr C Mcdonagh	Plot 7	APP/V1505/C/20/3264992	
8	Ms D Stokes	Plot 8	APP/V1505/C/20/3265011	
9	Mr J Mcdonagh	Plot 8	APP/V1505/C/20/3265012	
10	Mr P Collins	Plot 9	APP/V1505/C/20/3265049	
11	Mr T Cleary	Plot 10	APP/V1505/C/20/3265076	
12	Ms K Cleary	Plot 10	APP/V1505/C/20/3265077	
13	Ms L Foley	Plot 11	APP/V1505/C/20/3265056	

Appendix 2

List of those who appealed against Notice 2

14	Mr C Anderson	Plot 1	APP/V1505/C/20/3265044	Withdrawn
15	Mr B McGinley	Plot 3	APP/V1505/C/20/3265066	
16	Ms B McGinley	Plot 3	APP/V1505/C/20/3265067	
17	Mr F Anderson	Plot 4	APP/V1505/C/20/3265036	Withdrawn
18	Mr J Anderson	Plot 5	APP/V1505/C/20/3265028	
19	Ms B Mcdonagh	Plot 7	APP/V1505/C/20/3264996	
20	Mr C Mcdonagh	Plot 7	APP/V1505/C/20/3264997	
21	Ms D Stokes	Plot 8	APP/V1505/C/20/3265013	
22	Mr J Mcdonagh	Plot 8	APP/V1505/C/20/3265014	
23	Mr P Collins	Plot 9	APP/V1505/C/20/3265050	
24	Mr T Cleary	Plot 10	APP/V1505/C/20/3265078	

25	Ms K Cleary	Plot 10	APP/V1505/C/20/3265079	
26	Ms L Foley	Plot 11	APP/V1505/C/20/3265057	

Appendix 3

List of those who appealed against Notice 3

27	Mr C Anderson	Plot 1	APP/V1505/C/20/3265045	Withdrawn
28	Mr B McGinley	Plot 3	APP/V1505/C/20/3265068	
29	Ms B McGinley	Plot 3	APP/V1505/C/20/3265069	
30	Mr F Anderson	Plot 4	APP/V1505/C/20/3265037	Withdrawn
31	Mr J Anderson	Plot 5	APP/V1505/C/20/3265029	
32	Ms B Mcdonagh	Plot 7	APP/V1505/C/20/3264998	
33	Mr C Mcdonagh	Plot 7	APP/V1505/C/20/3264999	
34	Ms D Stokes	Plot 8	APP/V1505/C/20/3265015	
35	Mr J Mcdonagh	Plot 8	APP/V1505/C/20/3265016	
36	Mr P Collins	Plot 9	APP/V1505/C/20/3265051	
37	Mr T Cleary	Plot 10	APP/V1505/C/20/3265081	
38	Ms K Cleary	Plot 10	APP/V1505/C/20/3265082	
39	Ms L Foley	Plot 11	APP/V1505/C/20/3265058	

N.B. All names and spellings are taken from the Appeal Forms.