
Costs Decisions

Site visit made on 6 July 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 23 December 2022

Costs application in relation to:

Appeal A Ref: APP/Q1153/C/22/3297462

Appeal B Ref: APP/Q1153/C/22/3297464

Land at Blackhill, Beaworthy, Devon EX21 5AA

- 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 and Mrs James and Victoria Cook for a full award of costs against West Devon Borough Council.
 - The appeals were against an enforcement notice alleging the material change of use of land to a mixed use of agriculture, equestrian, the keeping/breeding and sale of pigeons, siting of a mobile home unit for residential purposes and the storage of a touring caravan ('the MCU Appeals').
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Costs application in relation to:

Appeal C Ref: APP/Q1153/C/22/3297456

Appeal C Ref: APP/Q1153/C/22/3297457

Land at Blackhill, Beaworthy, Devon EX21 5AA

- 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 and Mrs James and Victoria Cook for a [partial] [full] award of costs against West Devon Borough Council.
 - The appeals were against an enforcement notice alleging operational development consisting of the erection of two timber framed buildings ('the Op Dev Appeals').
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Decisions

1. In respect of Appeals A and B, the application for an award of costs is allowed in the terms set out below.
2. In respect of Appeals C and D, the application for an award of costs is allowed in the terms set out below.

Reasons

3. 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 and wasted expense in the appeal process.
4. In both applications, the Appellants seek a full award of costs.

Appeals A and B (the MCU Appeals)

5. The Appellants' claim is made for a number of reasons. Firstly, they say that the Notice was fundamentally flawed. It made no sense, as it made no reference to operational development in the alleged breach of planning control but required the removal of operational development. Further the Notice did not require the cessation of equestrian use, but did require the cessation of the keeping of horses on the land. This, they say, made no sense as the keeping of horses is allowable and its cessation cannot be forced. Lastly, the requirement to remove the caravan was unreasonable because, if the appeal was dismissed, it could lawfully be used for incidental purposes.
6. In response, the Council say that the Notice is not flawed, as: it requires the removal of chattels; as the land is agricultural and the horses are not, they are used for equestrian purposes; and, as the mobile home facilitates the residential use, it is correct to require its removal.
7. As I have said in my appeal decision a Notice that is directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use. This is the case, even if such works on their own might not constitute development, or they would be PD or immune from enforcement, so that the land is restored to its condition before the change of use took place. Therefore, the requirement to remove operational development that facilitated the breach was reasonable. I find similarly with the mobile home. In the absence of a Ground (a) appeal to accompany the Ground (f), and given the purpose of the Notice, I could not allow its retention for incidental purposes. It is, however, a matter that the Appellants and Council could address during the period for compliance.
8. The requirement to remove horses from the land was not unreasonable *per se*, and it is for the Appellants to make their case on the balance of probability. Their evidence shows that this use was carried out for the relevant period.
9. For its part, the Council asked me to take the content of the Officer report into an application for a certificate of lawfulness (Council reference 0652/22/CLE) into account in support of its case as a whole. The description of the use applied for there included 'equestrian' and in respect of the question of the use of the land by horses the report concludes "on the balance of probability, there is sufficient evidence in relation to the erection of the stable building and on the keeping of horses on the land".
10. Scant evidence has been brought forward by the Council to show why the position shown in the Officer report, which is relied upon without equivocation, changed to that in the Notice – that is to say, to cease the use of the land for the keeping of horses. As the Officer concluded in that report, the evidence showed that the equestrian use of the land was lawful.
11. I find the Council's actions in this regard amount to unreasonable behaviour, and that this led to unnecessary costs to the Appellants.
12. The Appellants also claim that the procedural approach taken by the Council was unreasonable and this led to unnecessary costs. They question the content of the Council's case and the manner that it was presented, citing: Ground (a) arguments made where there was no Ground (a) case; no case put forward in

respect of the Grounds (c) and (f) appeals; and that there was a lack of co-operation by the Council, that the case should have been reviewed and was not and the Council did not show the appropriate level of diligence.

13. The Council put forward its case for the appeals against both Notices in a single statement. It also relied on the Officer report for an application for a certificate of lawfulness that covered some of the arguments raised in the Op Dev appeal, which explains why there were Ground (a) arguments in its statement. Whilst I disagreed with it on a number of points, finding in favour of the Appellants, in the main I found its case to be substantive and well-reasoned. There were errors in the Officer report I refer to, but I do not find that these were either unreasonable nor that they led to unnecessary expense. Although no case under Grounds (c) and (f) was brought forward by the Council, it was for the Appellants to prove their case, in terms of the former, and in terms of the latter the Appellants' arguments were misplaced given the lack of a Ground (a) case. When read as a whole, I did not find the Council's case and actions to amount to unreasonable behaviour that led to unnecessary expense.
14. In the main, I found that the evidence shows that the Council showed diligence in its action. For example, it served a planning contravention notice to gain evidence before issuing its MCU Notice. Whilst there was no evidence that it reviewed its case after receiving evidence from the Appellants, save for that relating to the equestrian use, its case was not so wanting as to require the fundamental review suggested by the Appellants. Both sides suggest a lack of co-operation on the part of the other, but I do not have the evidence to find that this was the case by either of them.
15. Whilst I found against it on several matters, and that there might have been matters that the Council might have handled differently, its actions were not wholly unreasonable. Therefore, a full award of costs is not justified. However, on the matter of the land by horses, I find that the Council acted unreasonably and this led to unnecessary expense.

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 West Devon Borough Council shall pay to Mrs and Mr Victoria and James Cook, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the use of the land by horses; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to West Devon Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeals C and D (the Op Dev Notice)

18. The Appellants' make a similar case in this application as to that in Appeals A and B. They say that errors in the Notice were such that it was fundamentally flawed. The Council misunderstood the law and that its arguments in respect of the Ground (d) appeal addressed the change of use of the land, rather than the operational development. Furthermore, the Council did not review its case as

events unfolded and showed a lack of co-operation with the Appellants. Its actions were unreasonable.

19. Although the Council state that the buildings are correctly shown in the photographs, the case made by the Appellants is that the Notice refers to both buildings being shown in photograph D. They are right in this; however, this error was correctable without prejudice to the Appellants and, although regrettable, does not amount to unreasonable behaviour.

20. The Council argues that it did not misunderstand the development that was appealed against, nor the basis of the grounds of appeal. The Statement of Case put before me covered both the MCU and Op Dev appeals and, given the subjects of the two appeals, it was inevitable that there would be a degree of overlap between the two. I find that when read as a whole, and in this I take into account the Reasons for Issuing the Notice in its section 4, the Council made coherent and reasoned arguments as to why the unauthorised operational development should be removed. Although, in allowing the appeal, I did not agree with its position that did not make it an unreasonable one.
21. For the most part, for reasons that are similar to those given in my reasoning on the application for costs in the MCU case, I do not find that the Council lacked diligence in its work. However, this was not the case in respect of the erection of Building Y. The evidence shows that this had been erected in excess of the relevant period, and that this had been acknowledged in the Officer report into the certificate application.
22. The onus was for the Appellants to prove their case, and I found that they did. For its part, the Council gave scant evidence to show why its position changed so fundamentally. This was the only area where a case review might have led to the omission of part of its case. On the other matters the Notice raised, I find that the Council's decision not to review of its case was not unreasonable. Save for the horse-related issue, I found the rest of the Council's Op Dev case to be sufficiently coherent and well-reasoned.
23. There is no justification for a full award of costs. For the reasons given above, however, there is for a partial award.

Costs Order

24. 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 West Devon Borough Council shall pay to Mrs and Mr Victoria and James Cook, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the erection of Building Y; such costs to be assessed in the Senior Courts Costs Office if not agreed.
25. The applicants are now invited to submit to West Devon Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Roy Curnow

Inspector