



Costs Decisions

Site visit made on 1 February 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Costs application A in relation to Appeal Ref: APP/F2360/C/22/3300562 Lynbrook, Dob Lane, Walmer Bridge, Preston, Lancashire PR4 4SU

- 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 South Ribble Borough Council for a full or partial award of costs against Mr Leon Sutton.
 - The appeal was against an enforcement notice alleging the unauthorised operational development consisting of the erection of an outbuilding in excess of four metres high within the curtilage of the Land forming part of the domestic curtilage of Lynbrook, Dob Lane, Walmer Bridge, Preston, Lancashire PR4 4SU.
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Costs application B in relation to Appeal Ref: APP/F2360/W/22/3298537 Lynbrook, Dob Lane, Walmer Bridge, Preston, Lancashire PR4 4SU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by South Ribble Borough Council for a full award of costs against Mr and Mrs Leon Sutton.
 - The appeal was against the refusal of planning permission for erection of an ancillary building for the use and enjoyment of the owners of Lynbrook.
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Decisions

1. Application A for a full award of costs is refused, but a partial award of costs is allowed in the terms set out below.
2. Application B for an award of costs is refused.

Reasons

3. The Planning Practice Guidance advises that costs may 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. "Unreasonable" is used in its ordinary meaning as established by the Courts¹, and not in the stricter public law definition of "Wednesbury" unreasonable. Unreasonable behaviour can be either substantive (relating to the merits of the appeal) or procedural (relating to the process) in nature. The PPG indicates that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.

¹ Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

Costs application A

4. The Council argues that rather than engage with the Council, the appellant delayed discussions about removing the building following the dismissal of a previous appeal by submitting a further appeal that had no realistic prospect of success. I have considered this in detail under Costs Application B but conclude that the appellant's pursuit of the appeal against the refusal of planning permission for the erection of an ancillary building for the use and enjoyment of the owners of Lynbrook was not unreasonable.
5. The Council's position is that the enforcement notice could have been avoided if the appellant had engaged in dialogue with the Council rather than pursuing the second planning appeal which the Council considers had no reasonable prospect of succeeding. Although I have dismissed the s78 appeal, for reasons set out in the main decision letter, I do not find that it had no reasonable prospect of succeeding or that it was unreasonable behaviour for the appellant to have submitted it.
6. The Council also questions the conduct of the appellant's agent in challenging the legality of the Council issuing an enforcement notice following the submission of a s78 appeal. There is an evident misunderstanding of planning procedures and the powers available to a local planning authority, but that does not in itself constitute unreasonable behaviour on the part of the appellant or his representatives. I can understand the Council's frustration at lack of engagement, but the consequence of that is the pursuit of a planning application which is the subject of my main decision. In the circumstances set out by the Council I do not find that there has been unreasonable behaviour on the part of the appellant.
7. The Council has also advanced a costs application on the basis of partial awards of costs with respect to the appeal on ground (c). The ground of appeal is that there has not been a breach of planning control (for example because planning permission has already been granted or it is permitted development). As I have set out in the main decision, the appellant does not appear to be arguing that the outbuilding complies with permitted development requirements pursuant to Class E (buildings etc incidental to the enjoyment of a dwellinghouse) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). Instead the appeal on ground (c) is being advanced on the grounds that the matter could have been dealt with by negotiation with the Council to reduce the building to meet permitted development restrictions. The submitted plans clearly show that the outbuilding exceeds the height tolerances set under Class E and the appeal on ground (c) fails.
8. The fact that the ground of appeal is not supported by clear evidence that a breach of planning control has not occurred, unreasonable behaviour has been demonstrated and partial costs are awarded with respect to ground (c)

Costs application B

9. This application is made by the Council against the appellant on the basis that the appellant behaved unreasonably because the appeal against the refusal to grant planning permission had no reasonable prospect of success. The basis of this is that on 4 March 2022 an appeal was dismissed for the erection of an agricultural building on the grounds that it was inappropriate development in

the Green Belt, the building was not for agricultural purposes and the effect on the openness of the Green Belt. There were found to be no very special circumstances that were necessary to justify inappropriate development in the Green Belt.

10. The outbuilding the subject of the current appeal is the same building as the one to which the first appeal related and the Council argues that no attempt has been made to address the previous Inspector's conclusions. However, that is not the case because, although the building itself is the same, the proposed use has changed to an ancillary building for the use and enjoyment of the owners of Lynbrook. In planning terms that is materially different in terms of its function within the curtilage of the dwellinghouse, different in terms of how it should be assessed as inappropriate development or otherwise in the Green Belt under the National Planning Policy Framework and the development plan and also in terms of permitted development rights pursuant to Class E (buildings etc incidental to the enjoyment of a dwellinghouse) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).
11. I can see that the design, scale, materials and massing of the outbuilding within the Green Belt have not changed at all, but as a building intended to be used for domestic purposes associated with the host dwellinghouse known as Lynbrook the appellant has introduced arguments relating to a fallback position whereby a building of a smaller scale may be erected under permitted development rights. I have dealt with this matter in my main decision and highlighted the fact that the GPDO does not grant retrospective planning permission. Therefore, because the original outbuilding did not benefit from permitted development rights when it was constructed any replacement building would only have permission by virtue of permitted development rights granted pursuant to the GPDO after the Enforcement Notice is fully complied with.
12. I have concluded against the proposed development for reasons relating to the development being inappropriate development within the Green Belt, the effect on the openness of the Green Belt, harm to the character and appearance of the area and that no very special circumstances have been demonstrated, but that does not mean to say that the appellant's case was hopeless or had little prospect of succeeding.
13. Consequently, because the appeal against the enforcement notice required a fresh detailed assessment against the Framework and the development plan and raised some different planning and legal considerations, unreasonable behaviour has not been demonstrated with respect to the planning appeal.

Appellant's Response to Costs Application

14. The appellant has not responded directly to the Council's application for costs but has raised a number of comments with reference to the Council's behaviour. For completeness I deal with each of these below.
15. The appellant has addressed a concern regarding the use of the outbuilding for a glass business. The evidence of some business use of the outbuilding by the appellants is clear but has little bearing on the current appeals before me.

16. The matter of a planning contravention notice has also been raised by the appellant. Whilst I understand that a PCN can be a helpful tool in gathering intelligence and evidence with respect to a potential breach of planning control it is not a pre-requisite of serving an enforcement notice and in cases where there is other evidence available, it may not be necessary for a local planning authority to serve one. This has little relevance to the appeals submitted.
17. The appellant has also expressed some concerns regarding rights of entry and the way in which the Council has conducted its site investigations. The evidence before me is that Council officers attempted to communicate with the property owners to gain entry, but having received no response, officers then reverted to employing their legal powers to enter the site under the provisions of section 196 of the Act. This does not constitute illegal surveillance or covert operations that may be considered to be questionable.
18. There is an ongoing dispute between the main parties regarding engagement in discussions to bring about a satisfactory conclusion to the alleged breach of planning control. The evidence before me shows that the appellant was given opportunities to remove the outbuilding in question before the Enforcement Notice was served, but instead decided to embark on the planning application and appeals process.

Conclusions

19. I find that with respect to Appeal A, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified in the terms set out below.
20. I find that with respect to Appeal B, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a full award of costs are not justified.

Costs Order

21. 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 Leon Sutton shall pay to South Ribble Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect to the appeal on ground (c); such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to the person awarded against, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

A A Phillips

INSPECTOR