



Costs Decision

Site visit made on 18 July 2023

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Costs application in relation to Appeal A Ref: APP/W1145/C/22/3308168 and Appeal B Ref: APP/W1145/C/22/3308169

Land at Winnie's Wood, Black Torrington, Beaworthy, AKA Wishtree Agroforest & Permaculture Centre, EX21 5JN

- 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 Torridge District Council for a full award of costs against Ms Hayley Oakwood and Mr Mark Andrews.
 - The appeal was against an enforcement notice alleging the unauthorised material change of use of the land to residential use.
-

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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 or wasted expense in the appeal process.
3. The PPG provides non-exhaustive lists of examples of the types of behaviour which may give rise to an award of costs, one of which is "providing information that is shown to be manifestly inaccurate or untrue". The Council contends that it had evidence contrary to that submitted by the Appellants, which the Appellants failed to address, relying instead on the evidence contained in their own and others' signed Statements.
4. In my decision on the appeals, I conclude that there is insufficient substantive evidence to support the contention that the former owners of the Appeal Site were living there prior to August 2015. But that is not at all the same thing as concluding that the information provided by and on behalf of the Appellants was manifestly inaccurate or untrue. I have no reason to doubt that all of the evidence provided by the Appellants and their neighbours was given in good faith, and accurately represented their understanding of the circumstances. My decision was informed by testing the balance of probabilities, which requires the exercise of professional judgment as to the amount of weight that should be placed on each piece of evidence. I do not consider it unreasonable for the Appellants to have persisted in the view that their evidence, in the form of a number of signed Statements from different individuals, should outweigh the evidence provided by the Council.
5. The PPG's list of examples that might give rise to a procedural award of costs against an Appellant includes "introducing fresh and substantial evidence at a

late stage necessitating...extra expense for preparatory work that would not otherwise have arisen". The Council contends that new information in the Appellants' Revised Appeal Statement – in the form of assertions that the requirements of the Notice had been complied with, and the timber cabin constructed on site was in residential use and not subject to the requirements of the Notice – necessitated additional work in reviewing their own Statement.

6. The short answer to this point is that both of those assertions were first made at the earliest possible stage of the appeal process, in the original Appeal Statement submitted with the Appeal Form. Paragraph 10.2 of that Statement says "we would submit that the requirements of the enforcement notice have all, already, effectively been complied with in practical terms", and paragraph 2.7 says "building works have also been undertaken on the land and this operational development has been for residential purposes... not being required to be removed by the current notice, [it] would be subject of a deemed consent in any case, as would any use made of this operational development."
7. Further details and clarification of these assertions were provided in the Appellants' Revised Appeal Statement, received by the Planning Inspectorate on 28 November 2022, but there is nothing procedurally unreasonable in that: the Appellants complied with the timetable set by the Inspectorate's Case Officer to "By 30 November 2022: Please send me 2 copies of your statement if you need to add details to your appeal(s)." The Council then had (and took) the opportunity to provide comments on that revised Statement.
8. The Council also points out that the Appellants made a pre-application enquiry about a temporary rural worker's dwelling at the Appeal Site, in response to which the Council advised it was unlikely planning permission would be granted. As I understand it, the Council takes the view that the present enforcement action should therefore not have been necessary, and constitutes a waste of its time. However, the costs regime does not extend quite that far. There is a statutory right to appeal against an Enforcement Notice¹, and the costs regime exists to encourage all parties to behave reasonably *in the appeal process* (my emphasis).² The Appellants did not appeal on ground (a) (that is, that planning permission should be granted for the matters alleged in the Notice), so this is not a case where they could be criticised for proposing permission should be granted for development that conflicted with the Development Plan and the Council's earlier advice. Rather, the appeal was made solely on ground (d), and was supported by substantive evidence and reasoned argument. I can see no evidence of unreasonable behaviour by the Appellants during the appeal process.

Conclusion

9. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred. An award of costs is therefore not warranted.

Jessica Graham

INSPECTOR

¹ S.174 of the 1990 Act

² PPG paragraph 28