



Costs Decision

Inquiry held on 28-29 June 2023

Site visit made on 28 June 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th September 2023

Costs application in relation to Appeal Refs: APP/V2635/C/21/3286363; APP/V2635/C/21/3286364; APP/V2635/C/21/3286365; APP/V2635/C/21/3286366

Robyn's Nest, Baldwins Drove, Outwell, Norfolk PE14 8SB

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by King's Lynn and West Norfolk Borough Council for a partial award of costs against Mr J Vickers; Mr J Vickers; Ms C Vickers and Ms P Vickers.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the Land from agricultural use to a mixed use of agricultural land and use for residential purposes.
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Decision

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

The submissions for King's Lynn and West Norfolk Borough Council

2. The costs application was made orally at the inquiry. A partial award is sought, relating to grounds (b), (c), (d) and (f). The gist of the Council's case is as follows:
3. The burden of proof for grounds (b), (c) and (d) fall on the appellants.
4. Ground (b) - The appellants' rebuttal proof at paras 3.2d and 3.3d states that there is no dispute that there has been a breach of planning control. It expresses 'no doubt' that the evidence of both Mr Clarey and Mr Bates is correct. This admission means that the ground (b) appeal is hopeless.
5. Ground (c) - The ground (c) appeal hinges on the claim that permission for the mobile home is granted by the planning permission Ref 17/01048/F. But that planning permission permitted a barn, not a mobile home. In any event, the planning permission was not implemented, the building actually constructed being different to that shown on the planning permission. The suggestion that the mobile home was permitted by that planning permission is therefore wrong. The ground (c) appeal therefore stood no chance of succeeding.
6. Ground (d) - There is no evidence to support the appellants' claims. The appellants suggest that people were living on the land for many years, but it appears that a lot of the living was taking place in a car. It was a ludicrous case. It is claimed that it is unlikely the unauthorised use has been concealed, but now it is clear that there was deception. The suggestion of a lawful dwellinghouse is unreasonable; the appellants' own evidence shows that the barn was built in 2019, less than four years before the notice was issued.

Additionally, the day room was extended in 2019 or 2020 and therefore can't have been lawful. The appeal on ground (d) is therefore unarguable

7. Ground (f) - There was simply no suggestion of any alternative requirements for the notice.
8. The council has incurred costs arising from council officers' time and inquiry time. The appellants were given the opportunity to withdraw these grounds of appeal during the inquiry, and were given fair warning of the Council's intention to apply for costs. The appellants decided to proceed with these grounds of appeal in spite of the advanced notice of the costs application.

The response on behalf of Mr J Vickers; Mr J Vickers; Ms C Vickers and Ms P Vickers

9. The gist of the response, made orally at the inquiry, is as follows:
10. The notice must identify what the Council are seeking. The appellants have not been able to understand the notice. This is what has led to an unnecessary appeal and the associated costs.
11. The chair of the Planning Committee insisted on Condition 4 of the planning permission for the barn. In doing so, the local planning authority determined that the appellants could have a caravan. Permitted development rights flowed from the caravan. The local planning authority should have known why the caravan was there.
12. There was no deception by the appellants. Rather, it was a case of their just not being asked the right questions.

Reasons

13. 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.
14. Since the application relates to specific grounds of appeal, I have considered each in turn.

Ground (b)

15. The appellants clearly accept that unauthorised development has taken place on the site, including people living there. However, that was not necessarily fatal to the appeal on ground (b), which is concerned with whether or not the specific matters stated in the notice have occurred. While I have found the allegation to be correct, I have concluded that it is only an accurate reflection of the use of part of the site. Moreover, there were legitimate arguments to be made about the specific make up of the mixed use of the land and how it should be described. Accordingly, I seen nothing unreasonable in the appellants challenging the allegation under ground (b), despite agreement on some factual matters.

Ground (c)

16. The appellants' case relied on the apparent conviction that the planning permission for the barn¹ also permitted the siting of the mobile home for residential occupation. That was based on the reference to the caravan in Condition 4. It was a misunderstanding of the position, meaning that the appeal on ground (c) was flawed.
17. However, the appellants' error was understandable. By referring to the caravan and requiring its removal at some point in the future, the decision notice gives at least an initial impression that the caravan is something being permitted.
18. Moreover, and despite taking the view that the planning permission had not been properly implemented, the Council's own case for this appeal was initially compiled on the basis that the caravan was permitted by that planning permission. The Council's initial (hearing) statement stated at paragraph 3.11 that 'A third caravan on the Land was sited lawfully as it is conditioned under planning permission 17/01048/F (Appendix B) to remain on the Land until the general purpose agricultural barn is completed.' When I queried the lawfulness of the mobile home prior to the inquiry, the Council responded by referring to the 2017 planning permission and the condition, saying 'As the barn is yet to be completed the caravan remains lawfully on the land and is why the Enforcement Notice required a cessation of residential use but not its removal'².
19. Although the Council's position subsequently changed³, and I appreciate that it never suggested that the caravan could remain in place for permanent residential occupation, it seems to me that the condition and the Council's references to it have muddled the waters. Under these circumstances, I am not persuaded that the appellants' misunderstanding was unreasonable.

Ground (d)

20. The appellants' case on ground (d) relied heavily on the oral evidence of two appellants regarding the historic use of the site. However, the claims made at the inquiry were fundamentally undermined by the (undisputed) fact that the same appellants had stated on previous occasions that there was nobody living at the site. I am not convinced that this was the result of the Council asking the wrong questions; the evidence before me indicates that direct and straightforward questions were asked to ascertain whether people were living on the site and the Council was told that they were not.
21. The appellants now argue that the previous claims were untrue. However, the burden of proof falls on the appellants and there is no substantive evidence to show that the current claims regarding the use of the site are true rather than the previous claims that nobody was living there. The oral evidence given by the appellants at the inquiry was sometimes vague and was further undermined by the claim that the witnesses had previously made false statements to the Council. Thus, in the absence of any firm evidence to back up the appellants' claims of a longstanding residential use of the site, those claims fall far short of any adequate basis for their case on ground (d). Since most of the built elements now occupied residentially were constructed less

¹ 17/01048/F

² Email dated 14 February 2023

³ Statement of Case, para 4.5

than 4 years before the notice was issued, it was clear that they could not form the basis of a lawful dwellinghouse.

22. The lack of firm evidence to support the appellants' case, combined with its incompatibility with previous claims, leads me to the view that pursuing ground (d) was unreasonable. A significant amount of the Council's evidence and time at the inquiry were devoted to ground (d). This will have caused the Council unnecessary expense in preparing its case and pursuing the matter at the inquiry. The conditions for an award of costs on this ground therefore exist.

Ground (f)

23. Appeals on ground (f) are made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary. The appellants did not put forward any specific lesser steps. Rather the ground was used to briefly reiterate matters raised under other grounds of appeal. Consequently, the appellants could not have succeeded on ground (f).
24. However, the appellants' ground (f) case was very short. It was only briefly referred to in the Council's various submissions and occupied very little inquiry time. In truth, it did little other than reemphasise points already made under other grounds and did not raise any new points to address. Accordingly, while pursuing ground (f) may have been misguided, it is not evident that it has caused any material unnecessary or wasted expense.

Conclusion

25. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of ground (d) only, and a partial award of costs is therefore warranted.

Costs Order

26. 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 J Vickers; Mr J Vickers; Ms C Vickers and Ms P Vickers shall pay to King's Lynn and West Norfolk Borough Council, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to ground (d); such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Mr J Vickers; Mr J Vickers; Ms C Vickers and Ms P Vickers, 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.

Peter Willows

INSPECTOR