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## Costs Decision

Site visit made on 7 November 2023

**by Mark Harbottle BSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11/12/2023**

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### **Costs application in relation to Appeal Ref: APP/N2739/X/23/3316496 Paddock Lodge, Airfield Lane, Acaster, Selby, North Yorkshire YO23 2PW**

- The application is made under the Town and Country Planning Act 1990 ("the Act"), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
  - The application is made by North Yorkshire Council for a full award of costs against Mr S Armstrong and Mr J Hilton Cox.
  - The appeal was against the refusal of a certificate of lawful use or development (LDC) for creation of a dwelling.
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### **Decision**

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

### **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 Council (the applicant) considers it has been put to unnecessary and wasted expense in preparing the appeal case due to unreasonable behaviour on the part of the appellants (the respondent). This is because there was an extant enforcement notice relating to the dwelling at the time the LDC application was made.
4. An application for an LDC for an existing operation must be determined according to whether that operation was lawful on the date the application was made. Under section 191(2) of the Act any operation that has been carried out is lawful if no enforcement action may be taken in respect of it and it does not contravene any requirement of an enforcement notice then in force. While the applicant is correct that an enforcement notice was extant, that is not the same as being "in force". Because appeals against the enforcement notice had been made but had not been determined when the LDC application was validly made, the notice was not in force then. It only came into force when the appeals were dismissed, some 5 weeks later<sup>1</sup>.
5. The onus therefore lay with the respondent to demonstrate, on the balance of probability, that the dwelling was substantially completed on or before 10 August 2018 ("the Relevant Date"), 4 years before the date of the application.
6. As noted in the main decision, the dwelling was not substantially complete when I visited the site on 7 November 2023. There were no internal partition walls, the floor lacked a final surface, the inner surfaces of the main walls were

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<sup>1</sup> APP/N2739/C/22/3290690 and 3290691, dismissed 15 September 2022.

unfinished and no cooking, washing or toilet facilities had been installed. Accordingly, I found that the dwelling had not been substantially completed as a matter of fact.

7. The PPG states, in respect of enforcement and LDC appeals, that "Sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. The appellant is at risk of an award of costs, if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question." While those words are phrased in terms of an enforcement appeal including a ground that planning permission should be granted, the principle may reasonably be applied to the facts of an LDC appeal.
8. Fundamentally, and while not stated in the application for an award of costs, the respondent has presented no evidence to address a key finding of fact of the Inspector who dismissed the appeals against the enforcement notice. That finding was that the dwelling was not substantially complete in September 2022, some 4 years after the Relevant Date in this appeal. There is no evidence of a successful challenge to that finding, which therefore stands.
9. Considering this, and in the certain knowledge that my site visit would also confirm that substantial completion had not occurred, it should have been apparent to the respondent that the appeal could not succeed.

### **Conclusion**

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

### **Costs Order**

11. 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 S Armstrong and Mr J Hilton Cox shall pay to North Yorkshire Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Mr S Armstrong and Mr J Hilton Cox, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Mark Harbottle*

INSPECTOR