

Costs Decision

Site visit made on 5 March 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2024

**Costs application in relation to Appeal Ref: APP/Z4718/C/23/3328685
Land and property at The Piggeries, Longwood Edge Road, Longwood,
Huddersfield HD3 4XN**

- 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 Kirklees Council for a full award of costs against Mr Mohammed Ismail.
 - The appeal was against an enforcement notice alleging the construction of a building.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG is clear that there is a right of appeal, and this is expressly reiterated in respect of enforcement notices. It continues by saying that the parties in appeals are normally expected to meet their own expenses. The PPG says costs may be awarded where a party has behaved unreasonably and it says unreasonable behaviour may be either procedural, relating to the process, or substantive, relating to the issues and examples are given.
4. The Council's application for costs relates to substantive matters and is made on the basis that the appellant has behaved unreasonably by making and pursuing an appeal that had no reasonable prospect of success.
5. The PPG is clear that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when the appeal follows a recent appeal decision in respect of the same, or a very similar development on the same, or substantially the same site where an Inspector decided that the proposal was unacceptable, and circumstances have not materially changed in the intervening period.
6. In this case, as set out in my decision, the development is essentially the same, certainly very similar, to that which was found to be unacceptable by a previous Inspector. The appellant's case was limited to an intention to resubmit a planning application to resolve the matter and they did not seek to demonstrate, nor did I find, that circumstances have materially changed in the intervening period since the previous appeal decision.

7. Accordingly, the Council incurred unnecessary expense in responding to the appeal on ground (a) which had no reasonable prospect of succeeding.
8. Although I concluded that planning permission should not be granted and did not find the compliance period to be unreasonable, it was not unreasonable in the context of their statutory right of appeal and given the consequences, for the appellant to have pursued an appeal on ground (g).
9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the time spent by the Council defending their decision in respect of ground (a) and a partial award of costs is therefore warranted.

Costs Order

10. 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 Mohammed Ismail shall pay to Kirklees Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing their case in respect of ground (a) such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Mr Mohammed Ismail to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Felicity Thompson

INSPECTOR