



Costs Decisions

Inquiry held on 16, 17, 18 and 22 April 2024

Site visit made on 16 April 2024

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

an Inspector appointed by the Secretary of State

Decision date: 23 May 2024

Costs applications in relation to Appeal Refs:

A) APP/Y2620/X/22/3306008; B & C) APP/Y2620/C/22/3305910 & 3305911; D) APP/Y2620/C/22/3305902; F) APP/Y2620/W/22/3299210

Roundabout Farm, Hindolveston Road, Thurning, Norfolk, NR20 5QS

1. The Appellants have made two applications for full awards of costs. One relates to appeals A, B, C and D, and the other to appeal F.

Decisions

Appeals A-D

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

Appeal F

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

Reasons

4. 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.

Appeals A-D

5. Substantive appeals B and C concern "The Office" enforcement notice, and substantive appeals D and E concern the "Courtyard Barn" enforcement notice. Appeal E is not included in this costs application.
6. The Appellants have however included Appeal A, which concerns the Lawful Development Certificate refusal for The Office, albeit they have made no complaint about the LPA's assessment of this application.
7. The Appellants allege that the decision of the Local Planning Authority (LPA) to issue the two enforcement notices was unreasonable behaviour.
8. The LPA has a broad discretion to issue an enforcement notice where it appears to them that there has been a breach of planning control and it is expedient to do so. Any challenge to the issue of an enforcement notice is a matter of law and must be made by judicial review. An Inspector does not have the jurisdiction to consider this. In essence, it appears that the Appellants' concerns relate to expediency. This is outside the remit of the appeals.

9. The Planning Practice Guidance says that:

“For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.”

10. Although enforcement appeals B and C (The Office) succeeded, the LPA clearly had an arguable case. Appeal D (Courtyard Barn) was unsuccessful, demonstrating that there was merit in the LPA’s reasons for issuing the notice.
11. From the evidence, it is apparent that the LPA took time to diligently investigate and carefully consider whether to enforce against both The Office and Courtyard Barn. They undertook several site visits, asked appropriate questions, offered advice, and monitored the situation at length, thereby gathering significant evidence before proceeding.
12. The LPA fairly and genuinely considered what uses were taking place and the impacts they were having. It was not until it appeared to them that the tipping point had been reached, rendering the uses unlawful and contrary to the development plan, that they issued the notices. Their actions were proportionate and appropriate.
13. My own deliberations on the substantive issues involved a fine and detailed balancing exercise, which required careful consideration of substantial volumes of evidence, both written and oral. This demonstrates that these appeals were not clear cut.
14. Whilst the Appellants offered undertakings in an attempt to overcome the LPA’s concerns, the LPA was entitled to find them inadequate in overcoming their concerns. This was not unreasonable.
15. The Appellants infer that the LPA’s reason for issuing the Courtyard Barn enforcement notice was due to pressure from Helen Crawley’s solicitors, who set out in detail the noise and disturbance she was suffering, and what should be done about it. However, from the evidence, it is clear that the LPA considered all relevant matters, including other complaints, and comments from Environmental Protection and Highways.
16. Whilst the Courtyard Barn enforcement notice referred to the wrong policy (EC3 instead of EC2), this error is not so serious as to amount to unreasonable behaviour.
17. The Appellants complain about the lack of a report at the time of issuing the enforcement notices. However, adequate reasons for issuing were contained within the notices themselves and there were previous reports setting out the relevant information leading up to this. Nothing more was required.
18. Considering all the above matters, in my judgment the LPA has not behaved unreasonably so as to cause unnecessary or wasted expense. Consequently, an award of costs is not warranted.

Appeal F

19. The Appellants allege that the LPA's reasons for refusing their application to remove condition 3 of The Orangery planning permission were unreasonable.
20. The LPA approached the application on the basis that it was for the entire removal of the condition which, they feared, could lead to its use as a separate self-contained unit of residential accommodation.
21. For the reasons set out in my substantive decision, I found that separate use of The Orangery would be unacceptable, and the extent of its use needed to be controlled by way of condition.
22. The LPA gave four reasons for their decision. Reason 3) reflects their concern about separate use, and reason 4) expands on it. These reasons properly address the application and are appropriate. Whilst reason 1) is not a reason as such, it usefully sets out the development control policies and guidance that informed the decision. There is nothing unreasonable about that. Whilst reason 2) might appear somewhat tangential, reading the decision as a whole, the reasons are not unreasonable.
23. The Appellant asked the LPA to invite them to resubmit their application. Whilst the LPA responded by saying they were not in a position to encourage further applications at that time, they pointed out that the Appellants were clearly within their right to submit a further application if they wished and the LPA would consider it. This was an appropriate response.
24. The Appellants have not demonstrated that the LPA has behaved unreasonably. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Elizabeth C Ord

INSPECTOR