

Costs Decision

Site visit made on 5 June 2024

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

**Costs application in relation to Appeal Ref: APP/B2355/W/23/3336170
Dearden Wood Campsite, Michael Wife Lane, Ramsbottom,
Lancashire BL0 0QX**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Mark Law for a full award of costs against Rossendale Borough Council.
 - The appeal was made against conditions attached to the planning permission granted for a change of use of land to residential garden curtilage.
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Decision

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

Reasons

2. *Planning Practice Guidance* 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. It is alleged that the council acted unreasonably by imposing two conditions in relation to the planning permission granted. The council has not submitted a rebuttal so I have determined this application on the basis of the information before me.
4. The applicant has made reference to a lawful development certificate that was granted in association with the building and its immediate surrounds. This approval did not include the land to the rear. The applicant advises that the council persuaded the applicant to reduce the size of the red line area. This was accepted and the decision was based on that reduced red line area. The applicant now suggests that this should not have been the approach by the council and all the original land area should have been considered. I cannot assess the reasonableness of the council's approach with regard to a previous application. Furthermore, this appeal is not an appropriate procedure for determining lawfulness.

Condition 2

5. It is alleged that there was no justification for imposing condition 2 which
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requires a site investigation with regard to land contamination. It is suggested that the condition was unnecessary and results in unjustifiable additional expense.

6. The council have identified a past use of this site which may have resulted in land contamination. This former use is not disputed by the applicant. The new use is residential which is a sensitive use. It is a matter of judgment as to whether there is potential for the land, or parts of it, to be contaminated. I am aware of the questionnaire provided by the applicant in this regard which suggests that the potential for contamination may be low. However, a site investigation would be necessary to determine this conclusively. The cautious approach by the council was not unreasonable nor are the requirements of the condition unacceptably onerous. The condition should only relate to the land that falls outside the area previously considered as lawful but I am not satisfied that failing to specify this in the condition results in it being too imprecise.

Condition 3

7. It is alleged that the council failed to provide any clear justification for the removal of permitted development rights. The building and parts of its surrounds have been formally accepted as being lawful as a dwelling. The application included these areas rather than just the land to the rear, within the change of use application. It may have been more appropriate to exclude the already lawful area of the site from the red line and include it within a blue line. However, I find nothing within the application to suggest that the change of use of the remainder of the site would justify the imposition of more onerous conditions on the already lawful elements. Imposing a condition in relation to the entire site, when elements of it were already lawful, when the circumstances of the lawful element would not materially change other than to be supported by more outside space, represents unreasonable behaviour by the council.
8. Correspondence from the council suggests as an example that part of their concern related to the potential for an eight metres deep rear extension and a large garden building. Such works would fall within the newly lawful area and therefore would appear to be a matter that could reasonably be considered. However, the *Guidance* is clear that 'Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity'.
9. The blanket removal of all Class A, Class AA, Class B and Class E rights would take away rights already available to the original lawful dwelling and its surrounds. No justification has been put forward for including the removal of rights already available. It is not clear how this could be reasonable and the council have failed to provide any indication.
10. It would not be unreasonable for the council to consider the removal of rights within the additional area made lawful by the application subject to the requirements of the *Guidance* set out above. The reason for removing such rights was to protect the rural setting of the countryside in this location. Their example of a rear extension and garden building would represent a reasonable basis for considering such an impact. Their example relates to elements within

Class A, specifically A.1(g but possible also f) and Class E, specifically E(a). Their failure to be specific in this regard and the failure to fully explain why each element of each class could be justified, represents unreasonable behaviour. Given the highly screened nature of this site in the wider landscape and in the absence of any specific justification, I have not found the removal of any rights to meet the tests of reasonableness and necessity.

Conclusions

11. The council did not act unreasonably when imposing condition 2 with regard to contamination. It was however unreasonable to impose condition 3, removing rights that already existed from the dwelling and its lawful surrounds without clear justification; imposing blanket removals of such rights; and by failing to provide suitable justification.
12. The actions of the council fall within the example of unreasonable behaviour set out in the *Guidance*, specifically imposing a condition that is not necessary and reasonable, and thus does not comply with the guidance in the *National Planning Policy Framework 2023* on planning conditions and obligations. The council's unreasonable behaviour has resulted in unnecessary and wasted expense, as described in the *Guidance*, with regard to condition 3. A partial award of costs in relation to condition 3 only, is therefore justified.

Costs Order

13. 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 Rossendale Borough Council shall pay to Mr Mark Law, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in appealing against the imposition of condition 3 only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Rossendale Borough Council, who have been sent a copy of this decision, details of those costs with a view to reaching agreement as to the amount.

Peter Eggleton

INSPECTOR