



Costs Decisions

Site visit made on 4 April 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15TH AUGUST 2024

Costs application A - Appeal Ref: APP/M2372/C/22/3313692

Costs application B - Appeal Ref: APP/M2372/C/22/3313693

Land at 29 Princess Gardens, Blackburn BB2 5EJ

- The application is made under the Town and Country Planning Act 1990 (the Act), sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Application A is made by Mrs Kate Barlow and application B is made by Mr Thomas Barlow for a full award of costs against Blackburn with Darwen Borough Council.
 - The appeal was against an enforcement notice alleging without planning permission the erection of wood perimeter fencing and heavy-duty metal roller shutter gate at a height over 1 metre.
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Decisions

Costs application A - Appeal Ref: APP/M2372/C/22/3313692

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

Costs application B - Appeal Ref: APP/M2372/C/22/3313693

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

Reasons

3. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
4. The appellants claim that the enforcement notice was unreasonably issued in so far that the local planning authority (LPA) should have been aware that there was a roller shutter gate and boundary fencing on the site historically, and that there was no reasonable basis for it finding that such development had been recently erected on the land. It is for these reasons, that the appellants claim that unreasonable behaviour has been demonstrated and that they have wasted time and expense in pursuing the appeals.
5. In respect of the enforcement appeal decisions, I have concluded that the evidence does not sufficiently demonstrate that the roller shutter gate and boundary fencing was not recently erected as new development requiring planning permission. While it may be the case that some sort of roller shutter gate and/or boundary fencing was on the site previously, I have found that the evidence from the appellants is not sufficiently clear and unambiguous to demonstrate that such new development had been on the land for four years.

6. In the context of the above, I do not find that the LPA acted unreasonably in issuing the notice. It can be inferred from the appellants' costs applications that they also consider that the LPA acted unreasonably in deciding that it was expedient to take enforcement action as they claim that there was a different roller shutter gate on the land previously and that it was simply replaced with a new roller shutter gate.
7. In respect of expediency matters, the appellants did not lodge an appeal under ground (a) of section 174(2) of the Act and hence it was not possible for me consider the planning merits of the breach of planning control. In the absence of a ground (a) appeal, it was not possible for me to address matters relating to whether it was expedient for the LPA to take enforcement action and, in this regard, whether the notice was reasonably issued.

Conclusion

8. In respect of costs applications A and B, I conclude that the Council has not acted unreasonably, and that the applicants have not been put to wasted time and expense. Therefore, a full award of costs is not justified.

D Hartley

INSPECTOR