



Costs Decision

Hearing held on 3 September 2024

Site visits made on 2 and 3 September 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02nd October 2024

Costs application in relation to:

Appeal A Ref: APP/J2210/C/22/3313637 - Land at Beech Farm Wood

Appeal B Ref: APP/J2210/C/22/3313639 - Land at Prioress Wood

**Appeal C Ref: APP/J2210/C/22/3313640 - Land at Cook Wood
Woodlands Road, Adisham, Canterbury**

- The applications are 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 applications are made by Mr Lewis Parsons (Appeal A), Mrs Lettie Parsons (Appeal B), and Mr Luke Kearney (Appeal C) for full awards of costs against Canterbury City Council.
 - The appeals were against enforcement notices alleging the erection of buildings and the laying of hard surfacing at each site.
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Decisions

1. The applications for awards of costs are allowed in part, in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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. Each of the appellants seeks a full award of costs on substantive and procedural grounds. In summary, it is claimed that had the Council undertaken adequate prior investigations, it would not have issued the enforcement notices. The Council has made repeated erroneous claims that the appeal sites are within the Kent Downs National Landscape (the NL) and continued to refer to Policy HD4 of the Canterbury District Local Plan (CDLP) after accepting it was not relevant to the appeals. It is also claimed the Council should have served a Planning Contravention Notice (PCN) before issuing the notices and failed to review its cases following the submission of the appeals. Furthermore, it is claimed the Council failed to engage constructively with the appellants in advance of the Hearing, despite the appellants providing a draft Statement of Common Ground (SoCG) on 30 May 2024.
4. In response, the Council claims that it demonstrated why the buildings were not in accordance with the plans which formed part of applications for prior approval, and that the appellants failed to provide evidence to support their appeals under ground (c) until statutory declarations were submitted as late evidence in May 2024. Further, the Council claims to have set out harm caused

by the buildings to the character and appearance of the area and biodiversity which is contrary to the development plan. With regard to engagement between the parties, it was claimed that the Council's representative at the Hearing sought to agree a SoCG as soon as he was appointed by the Council. A SoCG could not be agreed until a site visit had been completed with the relevant parties present, which was delayed by pre-arranged holidays over the summer.

5. It is clear that the Council's case for issuing the notices was based on it considering the buildings had not been erected in accordance with the plans forming part of the prior approval applications on account of their internal arrangements only. The appellants explained how the buildings were claimed to have been substantially completed before internal alterations were made, without the need for planning permission. The Council's letter dated 29 August 2024 shows it did not have any evidence to contradict this. However, at some point shortly after sending the letter dated 29 August 2024, it appears the Council became aware that the external doors on the buildings were not as shown on the plans which formed part of the prior approval applications. This did not form part of the Council's case until the Hearing had opened.
6. The Council could have issued a PCN as part of its investigations prior to considering the expediency of issuing the notices. This would have allowed the Council to formally obtain evidence as to how and when the buildings had been substantially completed and subsequently altered, if at all. Receipt of such evidence may have persuaded the Council that no breaches of planning control had taken place, or that formal enforcement action would not have been expedient. Alternatively, it may have provided the Council with clear evidence that breaches of planning control had taken place.
7. In the absence of PCNs, the Council's investigations and its subsequent written appeal submissions focussed mainly on the internal arrangements of the buildings, rather than whether the buildings had been substantially completed in accordance with any planning permissions granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
8. I have found, as a matter of fact and degree, that it is unlikely that the buildings were erected in accordance with the planning permissions granted by the GPDO, but this is on account of the points made by the Council at the Hearing. The appellant was aware of these points in advance of the Hearing, as they are referenced in the Costs Application, but it was unreasonable for the Council not to have mentioned them within its Statement of Case. Had the appellants been aware of these points earlier, they may have withdrawn their appeals under ground (c), provided more detailed evidence relating to how the buildings were erected and altered, or sought an Inquiry for evidence to be given under oath and afforded more weight. Alongside all of this, throughout their written and oral submissions, the appellants were incorrect in their interpretation of Condition E.2(1)(e)(ii) of Class E at Part 6, Schedule 2 of the GPDO.
9. Although it was unreasonable for the appellants to submit statutory declarations as late evidence, this was not accepted until the Council made representations which suggested the notices could have been withdrawn shortly before the Hearing. The Council's letter dated 29 August 2024 sets out

that in light of the statutory declarations, it considered the appeals under ground (c) in relation to the buildings likely to succeed, and on that basis the appeals under ground (a) in relation to the hard surfacing could be allowed. Although the Council subsequently confirmed that it did not want to withdraw the notices, the effect of conceding the appeals under grounds (c) and (a) would have been the same. The Council later clarified that it did not intend to concede the appeals under ground (c).

10. It is not disputed that the notices erroneously refer to Policy HD4 of the CDLP and the sites being located within the NL. These significant errors were not comprehensively addressed in the Council's Statement of Case, which referred to the sites variously as bordering the NL and within the NL. It was unreasonable for the notices to contain such significant errors which were not fully clarified in the Council's Statement of Case.
11. Although brief, repetitive, and erroneous in a number of respects, the Council's officer reports and written submissions set out the reasons for issuing the notice and why it considered it expedient to take formal enforcement action. Those reasons were well-founded and sufficiently explained in writing and at the Hearing.

Conclusions

12. The Council failed to undertake adequate prior investigations, which resulted in it issuing inaccurate notices on a potentially misconceived basis. However, this does not mean that the Council would not have issued notices relating to the buildings or the hard surfacing had it carried out adequate prior investigations. This is because it remains unproven, on the balance of probabilities, that the buildings were substantially completed in accordance with the planning permissions granted by the GPDO or that any hard surfacing is lawful. Adequate prior investigations and a more thorough and accurate presentation of the Council's case prior to the Hearing would have assisted all parties and may have avoided appeals being pursued under ground (c).
13. I am unconvinced that any significant unnecessary or wasted expenses were incurred by the appellants in dealing with the Council's errors in the notices. This is because those errors were basic and obvious, and addressed quickly at the Hearing and are covered in a few short lines in the appellants' written submissions. Similarly, the Council's case under grounds (a), (f) and (g) did not need to be reviewed and engagement with the appellants on these grounds would have achieved little. Failure to agree a SoCG until the day of the Hearing did not result in the appellants incurring unnecessary or wasted expense in the appeals either.
14. The Council's unreasonable behaviour therefore resulted in the appellants incurring unnecessary or wasted expense in respect of their appeals under ground (c) only.
15. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of all time spent by the appellants pursuing appeals under ground (c) and partial awards of costs are therefore warranted.

Costs Order – Appeal A

16. 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 Canterbury City Council shall pay to Mr Lewis Parsons the costs of the Appeal A proceedings described in the heading of this decision limited to those costs incurred in dealing with all matters relating to the appeal under ground (c) only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant in Appeal A is now invited to submit to Canterbury City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Costs Order – Appeal B

18. 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 Canterbury City Council shall pay to Mrs Lettie Parsons the costs of the Appeal B proceedings described in the heading of this decision limited to those costs incurred in dealing with all matters relating to the appeal under ground (c) only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant in Appeal B is now invited to submit to Canterbury City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Costs Order – Appeal C

20. 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 Canterbury City Council shall pay to Mr Luke Kearney the costs of the Appeal C proceedings described in the heading of this decision limited to those costs incurred in dealing with all matters relating to the appeal under ground (c) only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant in Appeal C is now invited to submit to Canterbury City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Douglas

INSPECTOR