



Costs Decision

Hearing and Site Visit held on 1 October 2024

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2024

Costs application in relation to Appeals References:

**APP/U2370/C/23/3316124, APP/U2370/C/23/3316125 and
APP/U2370/C/23/3316126**

**Land on the north side of Crook Gate Lane, Out Rawcliffe, Preston,
Lancashire PR3 6TR**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Peter Nicholson, Mrs Kathryn Nicholson and Mr Dillan Nicholson for a full award of costs against Wyre Borough Council.
 - The Hearing was in connection with appeals against an enforcement notice alleging the erection of gates and gate posts to form a widened field entrance, and the creation of an access track and hardstanding lined with stone boulders.
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Decision

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

The submissions for Mr Peter Nicholson, Mrs Kathryn Nicholson and Mr Dillan Nicholson

2. The costs application was made orally at the Hearing. It is claimed, the Wyre Borough Council's Planning Enforcement Policy was not followed as written advice or discussions aimed at resolving the issue without need for formal proceedings did not follow the initial site visit. It is further claimed, had the policy been followed, the enforcement notice (Notice) could have been avoided. The applicants were therefore robbed of their opportunity to resolve matters in the nine months that elapsed between the enforcement officer's initial site visit and the issuing of the Notice. The Council's conduct leading up to the service of the Notice and their opposition of the appeal was therefore clearly unreasonable. A full award of costs based on procedural unreasonableness is therefore sought.

The response by Wyre Borough Council

3. The response was made orally at the Hearing. The respondent disputes they acted unreasonably during their investigation of the breach or during the appeal process. They consider the applicants' claim is directed at expediency, which is a matter for the courts and no challenge was brought against the issuing of the Notice. In the alternative, the applicants' criticism amounts to a customer service complaint rather than a demonstration of inadequate prior investigation. Nothing emerged at the Hearing to show that the issuing of the Notice could have been avoided. The Council were therefore within their rights to issue the Notice and defend it at appeal.

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. Behaviour and actions at the time of the enforcement investigation can be taken into account in my consideration of whether costs should be awarded.
5. It is for the applicant to clearly demonstrate how the alleged unreasonable behaviour has resulted in unnecessary or wasted expense. There is no claim that the respondent has acted unreasonably during the appeal process; deadlines were met, information and documents have been provided in a timely manner and representatives have been in attendance when required.
6. Paragraph 48 of the PPG identifies that the local planning authority's handling of an enforcement notice prior to the appeal may lead to an award of costs where they have failed to carry out adequate prior investigation. It would need to be shown 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.
7. An appeal on ground (b), that the matters alleged had not occurred as a matter of fact was made. The enforcement investigation carried out may have been minimal, however I found that the matters alleged had occurred and the Notice was found to be accurate, with the exception of a typographical error.
8. The dispute surrounding the matters alleged relates to whether the unauthorised works amounted to development and, if they did, whether they had the benefit of deemed planning permission granted by the GPDO¹. I found that the unauthorised works amounted to development and that they did not benefit from permitted development rights provided for in the GPDO. As such, it is more likely than not that the Notice would have had to be issued to remedy the breach of planning control. The issuing of the Notice could not have been avoided.
9. The Notice set out the respondent's reasoning as to why they considered planning permission should not be granted for the unauthorised development. It is fair to extrapolate from these reasons that planning permission would have been refused had an application to retain the development been made. While I ultimately found parts of the unauthorised development to be acceptable in planning terms, my findings are based on subjective reasoning. Furthermore, as the development had already occurred, the appellants have not been prejudiced by the time taken in pursuing the enforcement appeal.
10. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

M Madge

INSPECTOR

¹ Class A or Class B, Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended