



Costs Decisions

Site visit made on 23 October 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 OCTOBER 2024

Costs applications in relation to Appeal Ref: APP/C2741/C/23/3330303 Fulford Reach Moorings, Mooring 7, St Oswald's Road, York, North Yorkshire, YO10 4PF

- 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).
 - Application A is made by Miss Wendy Blackeway for a full award of costs against City of York Council. Application B is made by City of York Council for a full award of costs against Miss Wendy Blackeway.
 - The appeals were against an enforcement notice alleging without planning permission unauthorised change of use to residential use and without planning permission unauthorised development including the erections of structures, sheds, a shepherd's hut and fencing over 1 metre.
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Decisions

Application A

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

Application B

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

Reasons – Application A

3. 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.
 4. The appellant's application for costs is on the basis that the Council has acted unreasonably causing unnecessary expense in the appeal process in so far that:
 - it has failed to substantiate its decision for taking enforcement action in respect of the breach of planning control;
 - it unreasonably relied on historic decisions about the moorings, including the confirmation of a lawful development certificate, which related to specific points in time, and not the circumstances that existed prior to the notice being issued.
 - evidence was not provided to the appellant prior to the appeal being lodged, including the Council's planning enforcement expediency report.
 - the fence on the land is not as described by the Council as a 'wooden' fence, but is instead a 'bamboo screen'.
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- it did not engage with the appellant properly in respect of relevant issues including the fact that only one shed was on the appeal site when the notice was issued and not 'sheds' as described in the breach of planning control. The movement of the sheds was communicated to the Council prior to the notice being issued and should have been checked by the Council as part of a site visit;
 - no explanation was given in terms of why the fence should be reduced to 1 metre in height above ground level;
 - it was aware that the appellant was vulnerable and that '*she relied on the shepherd's hut and the fence for her basic wellbeing and security*';
 - it did not make adequate enquiries to establish the lawful use of the land and was aware that boats at the moorings were in use as homes and hence that the appeal land could be used for residential purposes;
 - the plan appended to the notice '*appears to have been prepared with a felt tip pen*';
 - it missed the first deadline in the appeal process by over a week and the statement of case does not provide adequate reasoning for issuing the notice; and
 - the applicant is in a vulnerable position and if the notice was to be upheld it would mean that she would have to take physical and practical steps at her own cost.
5. The notice gives specific planning reasons in terms of why it was issued. It explains that the appeal site is in the Green Belt and that the breach of planning control is inappropriate development in this regard. Furthermore, it explains that the site is within flood zone 3. I am satisfied that the Council has provided suitable justification as to why it was expedient to take enforcement action. Planning harm is adequately explained, and, in any event, it is noteworthy that the appellant decided not to appeal on ground (a) of section 174(2) of the Act. In other words, there was no deemed planning application made by the appellant.
6. I am satisfied that the evidence does demonstrate that the Council reasonably engaged with the appellant prior to issuing the notice. The Council suitably responded to requests for most information and afforded the appellant ample opportunity to resolve matters relating to the breach of planning control. The written evidence between the main parties does not support the appellant's contention that the notice was issued without any warning. The written communication between the Council and the appellant makes it clear that a notice would be issued in the absence of the breach of planning control not being suitably rectified.
7. In my judgement, the document prepared by the Council, dated 2022, and shared with the appellant, does not outline what is permitted development with reference to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It is instead a document which seeks to interpret the original 1973 planning permission for the moorings and reflects conclusions reached by previous Inspectors. It is a document that is also used by the Council from the point of view of considering underenforcing specified development on the riverbank. It is in this regard, that I find that the Council's

position in respect of underenforcing the erection of the enclosing fence is to be found and why reference is made in the notice to being able to have one storage building on the riverbank (although for reasons explained in my decision this 'requirement' does not relate to the breach of planning control). I do not find that the appellant has been misled in respect of the Council's 2022 document. Hence, unreasonable behaviour has not taken place in this regard.

8. The appellant asserts that the Council did not make adequate enquiries to establish the lawful use of the land. I do not share this view. The evidence is that the Council visited the appeal site and engaged with the appellant about these matters over some time. Furthermore, it is clear from the evidence that the Council had been investigating other breaches of planning control in the area and was cognisant of conclusions reached by other Inspectors relating to the moorings with reference to the 1973 planning permission. The evidence is that when the notice was issued, the Council had undertaken prior investigations to establish that it appeared that the breaches of planning control had taken place. It therefore reasonably issued a notice. The onus was on the appellant to make her case under the various grounds of appeal that she had pleaded.
9. I acknowledge that the LDC relates to a point in time. However, the LDC appeal had the effect of considering the planning permission for the site. It was not unreasonable for the Council to have regard to comments made in the LDC appeal or to consider the planning permission for the site in considering whether it was expedient to take enforcement action.
10. The appellant asserts that the Council did not provide her with requested documents prior to the notice being issued. This includes the planning enforcement expediency report. It would have been helpful if this had been provided to the appellant at an earlier stage. However, this has been made available to the appellant as part of this appeal, albeit late. While one may take the view that this amounts to unreasonable behaviour on the part of the Council, I do not find that a failure to see this report earlier has led to wasted time and expense in the appeal process. The issues raised in the planning enforcement expediency report have been covered in the Council's statement of case, and as part of the enforcement notice appeal, and the appellant has been afforded an opportunity to respond to such matters. Moreover, the reasons for issuing the notice are contained within such a notice.
11. The appellant asserts that the Council should have explained more clearly why the fence needed planning permission. I am satisfied that the Council did communicate with the appellant prior to the notice being issued and made it clear that a new 'permitted' fence up to 1 metre in height would not need planning permission. While the Council could have referred specifically to the relevant part of the Town and Country Planning (General Permitted) Development (England) Order 2015 (as amended) (GPDO), I do not find that there is evidence of unreasonable behaviour in terms of this matter. Moreover, the appellant has, in any event, responded to this matter as part of her appeal and the evidence is that her professional representative is fully aware of the provisions of the GPDO.
12. The appellant raises concern about matters leading up to the notice being issued including not being sent specific documents. I do not find that this directly relates to the appeal process itself. If the appellant considers that the

Council has not offered the kind of service that she would have expected, then that should be addressed separately with it.

13. While the Council accepts that an initial period of six months was given to address the breach of planning control, it is noteworthy that the compliance period in the notice is 12 months. As per my appeal decision, I find that this strikes an appropriate balance between any associated impact on the appellant's health and wellbeing, and the need to bring the unauthorised development to an end in the public interest.
14. I have no reason to doubt the Council's position that it reasonably balanced the personal circumstances of the appellant in deciding to take enforcement action and when considering a compliance period of 12 months. The planning enforcement expediency report specifically includes a section on Human Rights and the written communication between the appellant/her professional representatives and the Council leads me to conclude that the Council was aware that the appellant was vulnerable. On the evidence that is before me, I find that the Council's decision to take enforcement action was proportionate and appropriately reasoned. This action followed a period where the Council had given the appellant ample time to resolve the breaches of planning control that had occurred on the land.
15. I acknowledge that compliance with the notice would likely incur some cost on the part of the appellant. However, the appellant did not lodge a ground (g) appeal and did not disclose specific details of any financial hardship as part of the appeal process.
16. It is possible that the appellant may have been originally misled by her Estate Agent in terms of what is said in the selling brochure. However, this is a private matter to be addressed between the appellant and her Estate Agent. It is certainly not a matter that demonstrates that the Council has behaved unreasonably in the appeal process.
17. Even if an appeal deadline was missed by the Council, there is no evidence of this leading to wasted time and expense in the appeal process. The appellant has been afforded the opportunity to see all relevant appeal documentation and, in this regard, to comment on statements made by the Council. I find that the plan appended to the notice is sufficient for the purposes of identifying the land to which the breach of planning control relates. Even if a '*felt tip pen*' had been used, this does not amount to unreasonable behaviour.
18. The evidence is that the Council did submit a statement of case in time and, furthermore, the appellant has responded to it. I find that reference to the original permission for the moorings in 1973 in the Council's statement of case is wholly relevant when considering the appellant's grounds of appeal.
19. The appellant raised concern that the Council has referred to a wooden fence when in fact it is a bamboo screen. The notice does not refer to a wooden fence but instead to '*fencing over 1 m*'. Irrespective of any alleged references to a wooden fence, it is the notice that is relevant in this regard. In respect of the notice, I do not find any unreasonable behaviour leading to wasted time and expense in the appeal process arising from this matter.
20. As part of the consideration of the appeal made under ground (b) of section 174(2) of the Act, I concluded that the evidence supported the appellant's claim that only one shed had been erected on the land and not '*sheds*' as

described in the breach of planning control. The evidence from the Council was that it had thought that four sheds were erected on the land. However, this information was drawn from site visits which took place quite some time before the notice was issued.

21. I find that the Council did not undertake a reasonably thorough and up to date check of what was on the site immediately prior to the notice being issued. Upon my request for clarification about this matter, the Council comment that they were not able to see everything on the site when the notice was issued. It states that no evidence was before it in terms of sheds being removed from the land before the notice was issued. That is not correct as the appellant emailed the Council on 9 March 2023 and commented *'I'm trying my best to address your requests/demands but as yet you/the Council have not provided me with any material to back up or support your demands/requests. I have removed two sheds which leaves just one now, not 2. The shepherd's hut is up for sale & I have recently reduced the price'*.
22. While the Council states that site visits had ceased after April 2023 owing to the appellant's personal circumstances, I find that in view of the email of 9 March 2023 it should have been more vigilant in terms of making further enquiries or checks about the sheds on the appeal land. If necessary, this could have included a request (including a deadline) for photographic evidence to be provided relating to removal of all but one shed and, failing that, a request to undertake a further site visit, using enforcement powers of entry onto the land, and prior to the notice being issued.
23. While the appeal on ground (b) was partly successful, I was able to nonetheless correct the breach of planning control without injustice being caused. Despite this, I nonetheless find that the Council did display unreasonable behaviour in respect of identified matters. In particular, the Council's evidence relating to sheds being on the land when the notice was issued has not been reasonably substantiated. Moreover, the Council's claim that a shepherd's hut (i.e. operational development) as distinct from a residential caravan was on the land has not been reasonably substantiated. It was open to the Council to carry out a site visit prior to the notice being issued and, as part of that site visit, it could have included a detailed assessment of the so-called 'shepherd's hut' and whether in fact it was a residential caravan. Such unreasonable behaviour led to the appellant spending unnecessary and wasted expense in having to address the issues. For this reason, a partial award of costs is justified.

Reasons – Application B

24. The Council's application for costs is on the basis that the appellant has acted unreasonably causing unnecessary expense in the appeal process in so far that:
- the 1973 planning permission for the moorings was considered previously by an Inspector¹ in 2009 who commented that *'beyond limited storage for the boat mooring and a single parking space, I conclude that the use of the riverbank for purposes ancillary to the residential occupation of the houseboat was not authorised by the 1973 permission'*. The evidence is that the appellant was made aware of the

¹ Appeal Ref APP/C2741/X/08/2085343 – dated 13 May 2009.

breaches of planning control well in advance of the notice being issued and, moreover, was professionally represented. Therefore, there were no reasonable grounds for lodging appeals under grounds (b), (c), (d) and (f) of section 174(2) of the Act;

- the appellant informed the Council that the breaches of planning control would be rectified prior to the enforcement notice being issued. In correspondence with the appellant, the Council provided officer contact details in the event that the appellant needed clarification about particular matters;
- the appellant was advised in terms of what is allowed to take place on the appeal site, which considered the 1973 permission, and included matters where the Council would underenforce. A consistent message has been repeated to all owners of the boat moorings based on the Council's 2022 advisory document;
- the Council advised the appellant that if she felt that she was misinformed by the Estate Agent about what could take place on the appeal site, she should seek separate legal redress; and,
- the appellant's professional planning representative advised that a planning application and/or certificate of lawful development application (LDC application) would be submitted but this was not forthcoming.

25. While I note the Council's concern that the appellant did not fully comply with its requirements prior to the notice being issued, this is not a matter that is directly related to the appeal process itself. I do not find that a failure to submit a planning application and/or LDC application amounts to unreasonable behaviour resulting in wasted time and expense in the appeal process. While the appellant may have given the impression that the breaches of planning control would be rectified without the Council having to issue a notice, this also does not amount to unreasonable behaviour resulting in wasted time and expense in the appeal process.

26. Notwithstanding the above, the onus was on the appellant to make her case under grounds (b), (c), (d) and (f) of section 174(2) of the Act. For the reasons outlined in my enforcement notice appeal decision, I find that other than the limited success under the ground (b) appeal, the appellant has not provided credible and objective evidence to substantiate the claims made under the various grounds of appeal. Moreover, the appellant has not provided any reasonable or credible evidence to refute the conclusion reached by the Inspector in 2009 who considered what the 1973 planning permission did and did not permit on the riverbank. The appellant was clearly aware of the 2009 appeal decision when the appeal was lodged. Indeed, a copy of it is appended to her statement of case.

27. Save for the limited success in respect of the ground (b) appeal which relates to the erection of a shed rather than sheds on the appeal site, and the siting of a residential caravan as distinct from the erection of a shepherd's hut (i.e., operational development), I do not find that the appellant has reasonably substantiated her position in terms of the various grounds of appeal. I therefore find that unreasonable behaviour has been demonstrated leading to the Council wasting expense in the appeal process.

Conclusion – Application A

28. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted.

Conclusion – Application B

29. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs is therefore warranted.

Costs Order – Application A

30. 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 City of York Council shall pay Miss Wendy Blackeway the partial costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of dealing with the consideration of the erection of a shed as distinct from sheds on the appeal site and the siting of a residential caravan as distinct from a shepherd's hut on the appeal site (including part of the associated claims made under the ground (b) appeal) as described in the breach of planning control; such costs to be assessed in the Senior Courts Costs Centre if not agreed.
31. The applicant is now invited to submit to City of York 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 – Application B

32. 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 Miss Wendy Blackeway shall pay to City of York Council the partial costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of dealing with all the grounds of appeal but not in respect of the consideration of the erection of a shed as distinct from sheds on the appeal site and the siting of a residential caravan as distinct from a shepherd's hut on the appeal site (including part of the associated claims made under the ground (b) appeal) as described in the breach of planning control; such costs to be assessed in the Senior Courts Costs Centre if not agreed.
33. The applicant is now invited to submit to Miss Wendy Blackeway, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Hartley

INSPECTOR