



Costs Decision

Inquiry held on 29 October and 1 November 2024

Site visit made on 28 October 2024

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 November 2024

Costs application in relation to:

Appeal A Ref: APP/U2750/C/24/3337921

Appeal B Ref: APP/U2750/C/24/3337922

Appeal C Ref: APP/U2750/C/24/3337923

Appeal D Ref: APP/U2750/C/24/3337924

Appeal E Ref: APP/U2750/C/24/3337925

lant at School House Hillam Road, Gateforth, SELBY, YO8 9LQ

Decision

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

The submissions for Mrs India Barlow, Mr Dale Barlow, Mrs Lynn Sherratt, Mr Larry Sherratt and Mr Kevin Shields.

2. The costs application was submitted in writing. The appellants submit that a full award of costs is justified because the local planning authority (LPA) behaved unreasonably by (a) failing to investigate the alleged breach adequately; (b) failure to adequately assess the impact of the enforcement proceedings on the appellant's Human Rights, including their young child; (c) failing to act in a consistent and transparent manner; (d) absence of engagement and cooperation with the appellants throughout the enforcement investigations; (e) failure to adhere to their own enforcement policy/plan; (f) disregard for the appellants' personal circumstances; and (g) flaws in the enforcement notice issued.

The response by North Yorkshire Council

3. The response was made in writing. The Council dispute that their prior investigations were inadequate, citing two site visits, inspection of google images, correspondence from the appellants including information supplied by the appellant in support of a planning application. They also submit that in any event more diligent investigations would not have prevented the need to serve the Notice at all.
4. The Council do not believe they acted inconsistently or without transparency. All written communication was consistent and advised that the containers were unlawful. The appellants were aware of the Council's position from at least February 2021. The Council submit that they paused taking enforcement action whilst the appellants pursued planning applications for a new dwelling on the Land, which may then have provided the appellants with a fallback for residential use.

5. The Council's Enforcement Plan only provides targets and there is discretion in case-management according to the individual circumstances of a case. The Council accept that issuing the enforcement notice just before Christmas was unfortunate, but necessary given the recent refusal of planning permission for a dwelling on the Land and the imminent immunity period for the operational development. At no time did the appellants seek a retrospective application to retain the containers nor make an application for a certificate of lawful development or use. Indeed, they moved another container onto the site in the knowledge that the LPA considered that such development would require planning permission. An offer of a planning obligation to retain the containers as "ancillary" accommodation was not considered by the LPA to overcome the alleged harm.
6. The Council emphatically deny that they had no regard or consideration of the appellants' personal circumstances. Personal impacts are inherent in taking enforcement action in relation to a residential use and it does not follow that such action is unreasonable. The Council extended the normal 28 period for an enforcement notice to take effect to take account of the Christmas period and the time for compliance considered the need for alternative accommodation to be found. The Council has subsequently said that they would not object to this being extended to 12 months.
7. The Council accept that they unintentionally made an error when drafting the requirements of the Notice. However, they accepted and understood the possible implications of that error. That was not unreasonable behaviour.

Reasons

8. 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.
9. It is for the applicants 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.
10. Planning Practice Guidance states that local planning authorities are at risk of an award of costs in relation to enforcement action if 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 accurate¹.
11. 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 as operational development had occurred and in that respect the Notice was found to be accurate.
12. The Council accepted in response to my Pre-Inquiry Note that they had made an error in not requiring the alleged change of use of the paddock land to residential garden to cease. However, it was their decision to continue to

¹ Paragraph: 048 Reference ID: 16-048-20140306.

- pursue the Notice as drafted. They were entitled to make that decision, and possible under enforcement could not prejudice the appellants in that regard.
13. It can be seen by my decision that it is not possible to have a material change of use of Land to residential garden. Residential garden is an ancillary use, and not a primary land use. I therefore varied the Notice to remove that part of the alleged breach. Nonetheless, having regard to the appellants' case on appeal, which was based on the containers not being a building (operational development) but a lawful use of Land, there was no prejudice to the appellants by that variation nor any additional cost incurred in making out their case. Indeed, if I had found that the containers were not a building and building operations had not taken place, the appellants would still have needed to demonstrate that a material change in the use of the Land had not taken place, and that use was lawful (grounds (c) and (d)).
 14. I found that the unauthorised works amounted to operational development and that the development was a breach of planning control. 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 and appeal could not have been avoided.
 15. The PPG advises that the provisions of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998, are relevant when deciding whether to take enforcement action. LPAs should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by the breach of planning control². However, whether the actions of the LPA were in accordance with the law is not a matter for me in my consideration of this appeal, nor in relation to this application for costs.
 16. I sympathise with the appellants and the situation they find themselves in, and I recognise how upsetting this must be. However, S172(1) of the Town and Country Planning Act, 1990, as amended, provides that an LPA may issue an enforcement notice where '*it **appears** to them (a) that there has been a breach of planning control; and (b) that it is expedient to issue the enforcement notice....*'. Thus, the LPA does not have to be certain that a breach of planning control has occurred, it is for the appellant to establish such grounds. Furthermore, as set out in my decision, the matter of whether it was 'expedient' for the LPA to issue an enforcement notice must be pursued by way of judicial review and is not a matter for me to consider in this application. Any concerns that the Council did not adhere to their Planning Enforcement Management Plan (December 2018) is also a matter for the Council. The costs regime relates to unreasonable behaviour that has resulted in unnecessary or wasted costs having been incurred in the appeal process. For the reasons set out above I have found that the appeal in this case could not have been avoided.
 17. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Elizabeth Pleasant, INSPECTOR

² Paragraph: 003 Reference ID: 17b-003-20140306