



Costs Decisions

Hearing held and site visit made held on 17 December 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Costs applications in relation to Appeal Refs: APP/C2741/C/24/3350280 and 3350281

Land on the East Side of Manor House, 584 Huntington Road, York YO32 9QA

- The applications are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by Mr Stephen Massey and Ms Amy Warner for a full award of costs against the City of York Council, and by the City of York Council for a full award of costs against Mr Stephen Massey and Ms Amy Warner.
- The Hearing was in connection with an appeal against an enforcement notice alleging unauthorised operational development and a material change of use of land.

Decisions

The application by Mr Stephen Massey and Ms Amy Warner

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

The application by the City of York Council

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

Procedural matter

3. The applications, the responses to each application, and the final comments in both cases, have been made in writing.

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.

The application by Mr Stephen Massey and Ms Amy Warner

5. The Appellants could have applied for a Lawful Development Certificate or for planning permission at any time, and doing so does not need to be at the behest of the Council. Issue of the enforcement notice did not force the Appellants "...to admit guilt to a breach of planning control..." but gave them an indication that, in the opinion of the Council, there had been a breach of planning control. The notice set out the possibility of challenging the allegation through the appeal process, a process that the Appellants initiated. The Council must carry out their planning duties irrespective of the source of a complaint, even if the complaint was made by the local Parish Council.

6. The Council is not required to expand on their view that the appeal site is not residential curtilage in informal correspondence. They were required to explain their view in their Hearing Statement, which they did. There is nothing wrong or unlawful with alleging a material change of use and operational development in an enforcement notice. In some cases where the two allegations are related, as in this case, issue of two notices can be confusing. It is for the Appellants to ensure that the relevant grounds of appeal are identified for each element of the allegation. Withdrawal of a previous notice cannot influence this application for an award of costs. As indicated above an application for an award for costs relates to unreasonable behaviour "...in the appeal process". The Appellants' comments about what occurred before the appeal was made are not therefore relevant.

7. Reference to a hedge in the enforcement notice, when it wasn't referred to in the withdrawn notice, is not relevant. The Council, in this regard, is entitled to revisit circumstances at any time. The offer of a financial contribution by entering into a unilateral undertaking was wholly misplaced, and would not have been a matter to be weighed in a planning balance. The Council is entitled to interpret documentary evidence as they may to support their case. It is not surprising that the Appellants disagreed with their interpretation. The Council, in exercising their duties as Local Planning Authority, deemed the issue of the enforcement notice to be expedient and in the public interest. The Appellants exercised their legal right to challenge issue of the notice by submitting an appeal. It is inherent in the appeal process that the main parties will disagree; this is entirely normal.

8. The Council has not, at any time during the appeal process, acted unreasonably and the Appellants have not therefore incurred unnecessary or wasted expense. The application for an award of costs thus fails.

The application by the City of York Council

9. The appeal was made on all grounds but in the application for a full award of costs, which is based on the grounds of appeal, the Council has made no reference to grounds (e) and (f). Of the grounds they have referred to grounds (a), (b), (c) and (g) are arguable and the Appellants have adequately substantiated their arguments in writing and verbally at the Hearing. The Appellants' ground (d) appeal relates to the operational development element of the alleged breach of planning control. On their own evidence the operational development began in 2023 and is not therefore immune from enforcement action. The ground (d) appeal was bound to fail and, in this regard, the Appellants have acted unreasonably. The Council has incurred wasted expense in refuting the ground (d) appeal and, to this extent, the application for an award of costs succeeds.

Costs Order

10. 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 Mr Stephen Massey and Ms Amy Warner shall pay to the City of York Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the ground (d) appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The Council is now invited to submit to Mr Stephen Massey and Ms Amy Warner details of those costs with a view to reaching agreement as to the amount.

John Braithwaite

Inspector