Planning Inspectorate

Costs Decisions

Inquiry held on 20, 21 February, 6, 7 August 2024

Site visit made on 8 August 2024

by Grahame Kean BA(Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2025

Appeal A Ref: APP/E2001/C/23/3324050
The Meadows Acey Lane, Preston, HULL, HU12 8TN

Appeal B Ref: APP/E2001/C/23/3323978
The Meadows, Acey Lane, Preston, East Riding of Yorkshire, HU12 8TN

Appeal C Ref: APP/E2001/C/23/3324051
The Meadows Acey Lane, Preston, HULL, HU12 8TN

Costs applications

- 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).
- Application 1 (Appeal A and Appeal B) is made by Mr Roy Hetherington and Mrs Andrea Hetherington for a full, and in the alternative a partial award of costs against East Riding of Yorkshire Council.
- Application 2 (Appeal A and Appeal B) is made by East Riding of Yorkshire Council for a partial award of costs against Mr Roy Hetherington and Mrs Andrea Hetherington.
- Application 3 (Appeal C) is made by East Riding of Yorkshire Council for a partial award of costs against Beverley Building Society.
- The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission the erection of a dwellinghouse, associated works and material change of use of land to mixed use for residential purposes and livery use.

Decisions

Application 1

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

Application 2

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

Application 3

3. The application is refused.

Preliminary matters (all applications)

4. All costs applications were made and responded to in writing. The applications and responses were supplemented by oral representations at the inquiry.

5. 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.

Application 1

The submissions for Mr and Mrs Hetherington

6. The Council had failed adequately to investigate the breach of planning control. The breach of control alleged in the notice and the Council's case was inaccurate; the Council failed properly to engage with the appellants and their agents in the lead up to the inquiry that could have narrowed the issues; it failed to produce key documents prior to the inquiry despite requests for them by the appellants' agents; and introduced a core document (CD) bundle two days before the inquiry which wasted significant time and caused ongoing confusion with two different sets of references for all documents.

7. In particular, the site visit was unannounced and in the absence of the appellants, but the visit informed the Council of key aspects of the reasons for which the enforcement notice was issued. Officers failed to organise a meaningful site visit or interview, properly to assess the house as built or assess the business need for it or obtain information about occupiers of the site who included a child. A planning contravention notice (PCN) should have been issued to obtain information. The council rushed to issue the notice instead of undertaking a careful and considered investigation.

8. Officers had asserted wilful and deliberate breaches of planning control to circumvent the planning system and gain benefit (ie they alleged the appellants circumvented the system) but the allegations were unsubstantiated.

9. The Council failed properly to respond to numerous requests under the freedom of information legislation related to its enforcement file. Miss J sought to read from her file notes when they were not in evidence before the inquiry.

10. The Council did not properly survey site levels until during the inquiry and then retro fitted the evidence on flood risk to the results.

11. The Council should have considered the planning unit earlier than it did. It also failed to understand that the permission for a temporary building was not implemented in which case a mixed use as alleged could not have occurred.

12. After the notice was served officers declined to engage with the appellants' advisors, despite numerous requests, or to consider evidence accepted by the Council as reliable but relied on mistaken interpretations of images and business accounts. The assessment made in the notice was disproportionate, unfair and inappropriate.

13. Critical issues in the business case were not recognised by the Council's valuation expert, eg that the business never operated as solely DIY livery, but voluminous evidence was produced which was irrelevant and inaccurate.

14. Had the right questions been asked the appeal could have been avoided. It was clear that there was a functional need for a responsible person to live on site, separate from the financial test but the Council's expert strictly interpreted the financial test without taking into account individual circumstances of this case.

15. The appellants were open to modifying the dwelling (by removal of the attic storage) and discussions between May 2023 and January 2024 could have led to an amended scheme being agreed and the notice withdrawn.

16. The alternative claim for a partial award reflects a substantial proportion of the time spent at the inquiry justified on the basis that the Council failed to review its case and engage with the appellants since the appeal was made. Effective engagement could have narrowed the issues and made for a more focussed and much shorter inquiry which would have saved costs on both sides.

17. These actions were unreasonable behaviour that led to wasted costs being incurred.

The response by the Council

18. There was correspondence going on between the planning case officer and the appellants' agent. Applications were made for a minor material amendment, and a lawful development certificate (LDC) but it was clear there were serious issues with the development 'as built' and the Council proceeded with the investigation in April 2023.

19. Enquiries were made about the site in general, not just the horses. When the finished floor level (FFL) was measured it was not suggested that the original ground level had been raised, hence it was measured against visible ground level. That ground levels had been raised to accommodate the FFL was only introduced at the inquiry by Mr Hetherington and the Council had to respond accordingly but it had no evidence on the actual built floor level or alterations to ground levels and no updated Flood Risk Assessment (FRA).

20. The Council officer's call to Mrs Hetherington was not just to ask if she would need help finding alternative accommodation, but to explain more generally what was happening. Also, there was contact from Mr Bottomley which was not just to offer housing assistance but to try to carry out a welfare check.

21. Post-issue of the notice, there was engagement, for example, the statement that no reply was received to the letter dated 31 July 2023 is incorrect. An e-mail response to the appellants' agent at that time was sent on 2 August 2023. It noted that the appeal was made, the Council's statement was submitted and therefore the appellants' evidence should be sent through the appeal process. A response was also sent to the appellants' advocate on 24 October 2023 advising that evidence in support of their case should be via the appeal, the enforcement file could not be produced, and the relevant documents that the Council would rely on would be put in evidence.

22. The Council's evidence was based on available information including that given with the s73 application and the evidence did refer to the potential for part livery as well as DIY livery. Little or no evidence on the business operation was given save reliance on an old business case accepted to be out of date. To suggest that the business was operating as originally planned (all part livery), was inconsistent with evidence from Mrs Hetherington.

23. The CD bundle only brought together documents that were in the appellants' knowledge or background policy documents in the public domain and correspondence between the parties. The only 'new' information was enforcement site visit photographs of the appellants' own property. No extra costs were incurred in any event and no adjournment was necessary. There

was a minor error in labelling CD appendices but corrected in the new set before the inquiry re-opened.

24. The decision to take enforcement action took account of all information including that in the s73 and LDC applications and other background research. The appellants had opportunities through the s73 and LDC applications to put their case, but the latter was wholly inadequate and was refused. The former was not a full retrospective application, and both applications predated the issue of the notice. The claim that there was a child living part-time on the site was brought late in the appeal, there was no independent evidence of this, such as school records etc and in any event the child was living elsewhere in the West Hull area. The child's father gave no evidence explaining this alleged arrangement. The Council was prevented from establishing the appellants' circumstances because they declined to engage with the welfare check. Service of PCNs was unnecessary here as the Council was aware of the relevant information via the s73 and LDC applications and other background research.

25. For ground (b) the appellants' pre-inquiry case accepted there was a mixed use. The position only changed with the planning witness's evidence.

26. The Council explained why discussions were inappropriate as the appeal process had begun. Before the notice was issued, there were discussions with other agents and representatives. The appellants could have made a full application to retain the development when the s73 application was returned.

27. The appellants declined to engage with the welfare check. It was accepted that there was no written report but an assessment of the proportionality of the proposed action was made at every stage. The severity of the situation was in officers' minds when making the decision to enforce.

28. The appellants sought to retain the temporary living accommodation in 2016 and it was not then said that it was unauthorised, or later in the grounds of appeal or statement of case. It was a new point made at exchange of proofs. The breaches of condition would not have warranted enforcement action.

29. It was incorrect that no reply was received to the request to agree a set of plans or list of differences. The appellants' agent was emailed on 9 February 2024 advising that the Council was making a comparison plan which was sent to the agent and PINS on 15 February 2024. When adjourning the inquiry in February, the Inspector asked if it would be possible to agree which set of plans most accurately reflected the appearance of the dwelling. The Council shared the key dimensions with the appellants, asking if they were going to have actual 'as built' plans prepared to assist the inquiry and was advised they were not providing any more plans.

30. The statement that the Council ignored, rejected or delayed responding to requests for information (including FoI) were incorrect. The requests were separate from the appeal process and did not engage officers involved in the appeals. Information was given without breaching statutory exemptions and there was no appeal or reference to the Information Commissioner. No new FoI documents were introduced to the appeal, it was the appellants who introduced the authorisation report, and the Council was unaware of a specific request for a copy the s73 file. Miss J explained in cross examination that the contents of her site visit notes were in her proof. She read them out verbatim at counsel's

request, but it was not new evidence. The appellants themselves relied on late evidence throughout the appeal and changed their grounds of appeal.

31. It was not said in evidence that the business had never operated as wholly DIY livery. The evidence was not that the yard operated as intended in 2016, it was that it was still operating with some part livery and some DIY livery.

32. The notice would have been issued in any case as the business did not meet the essential need test, even if the dwelling had no attic rooms. The appellants' agent agreed in cross examination that it was not their case that permission should be granted contrary to the development plan, therefore the assessment against policy S4 was key. It was unclear what issues would have narrowed through further engagement. The Council abandoned the concealment issue only, as it was not required. The appellants significantly altered their case throughout the inquiry, introduced late evidence at numerous stages and ultimately conceded significant portions of their case.

Reasons

33. The application can be considered under the following headings.

Failure to engage, serve PCN, or properly investigate before notice issued

34. There is no reason why the Council should have had to serve a PCN on the appellants if they had gained sufficient information as to make it expedient in its view that an enforcement notice should be issued. There is ample evidence that when the appellants brought to the Council's attention the significant differences between the approved dwellinghouse and the as-built development, they received appropriate advice. The differences were represented as minor by the planning agent at the time, but they were not.

35. The LDC and s73 applications were rejected on their merits or because the appellants' agent(s) at the time failed to pursue the appropriate procedure. In any event, in the appeals decision the appeals on all grounds including (d) and (a) failed (save that the compliance period was extended). On the evidence the appeals would have been made in any event, whether the Council had treated the s73 application as a s73A application, whether the appellants had made a fresh s73A application as advised, or whether they had provided more evidence in their LDC application.

Failure to produce documents or respond to Freedom of Information requests

36. As I pointed out to the appellants before the inquiry commenced, the FoI procedure is a different process from the appeals process and there is a separate avenue for redress if it was felt the appellants were denied access to relevant documents. As it was, the CD bundle provided a comprehensive set of documents that enabled a decision to be made on the appeals. I accepted late documents from the appellants that were added to the bundle and was not put on notice of the existence of any document in the Council's possession critical to determination of the appeals, that was not before me.

Failure to carry out proper survey of levels

37. The Council did carry out a later survey of the FFL but in response to evidence at the inquiry from the appellants. It was an issue that went to the flood risk and there were other matters on this topic that were relevant to my decision,

but the lack of an updated FRA was instrumental in the appellants not being able to show on the balance of probability that the necessary tests were met.

Wrongful accusation of concealment

38. The application is couched in terms that suggest improper behaviour by the Council’s officers, but there is no such evidence. The initial assessment of concealment was based on the silence that obtained throughout the period when it was alleged (wrongly as I found) that breaches of the conditions relating to the temporary living accommodation were so fundamental to the permissions that the effect was to confer immunity on the residential use of the land. When it became apparent (at least initially) through cross examination of the appellants’ planning witness that the appellants were not pursing the ground (d) appeals as far as concerned residential use, the Council withdrew their case on concealment. However, the residential use case was still urged on me. The Council might well have had cause to reconsider, but in the event as I found in the appeals decision the residential use case was not made out.

Consideration of planning unit and location (and type) of temporary building.

39. I appreciated the distinction made by the appellants as to whether there was in fact a mixed use on the land, but emphasised to both partes before and during the inquiry that the planning unit was only a tool to assist in identifying whether a material change in the use of the land occurred. There was no great merit in dissecting the facts because even if (which I found not to be the case) the notice wrongly alleged a mixed use and there were in fact two separate planning units, the notice could have been amended without injustice, as the appellants accepted. The Council’s reply to the ground (b) case was not at fault, nor its view of the effect of the location of the temporary accommodation.

Behaviour after notice issued

40. It can be frustrating for a party who fails to get the other side to appreciate their position or to reconsider matters. Once the appeals were made the Council saw no merit in engaging in that process. I have not found their behaviour unreasonable or in any way disrespectful of the appellants, however much the latter found the Council’s stance unreasonable.

41. It is unfortunate that the appellants had to instruct several successive planning agents and solicitors, and some exchanges between previous agents and the Council must have increased the appellants’ sense of frustration. For example there was a prolonged exchange between the Council’s officer and a solicitor around the time of the LDC application. However, the officer was courteous in dealing with the highly critical tone of the emails.

42. There was some uncertainty as to how the variation/retrospective application should or could have been dealt with. It appears that what was formally applied for was a s73 application. The advice was to make a s73A application, but the appellants’ solicitor seems to have misunderstood the Council’s advice in the email of 13 March 2023. He complained that they were told a s73A application was not possible but that is the opposite of what they were told[1]. The advice was that, having before them an application apparently made in the form of a s73 application to vary the plans approved in the 2017 permission, the permission had lapsed, with the result that there was no permission that could

[1] CD8.27

be the subject of a s73 application. In any event, the notice was issued shortly thereafter giving the opportunity to appeal and have the merits of a deemed application considered.

43. Interpretations of photographs, financial accounts and the like are a matter of evidence. Off-line discussion and agreement were encouraged, and both parties co-operated with me on this. Whilst I have sympathy with the position of the appellants, the Council's actions were not disproportionate, unfair or inappropriate.

Critical issues in business case not recognised

44. In the appendices to Mrs Hetherington's evidence she explained she did not do full livery which appeared to contradict (save for the single crossing out in the description of the business of "full" and insertion of "part" livery) the business appraisal from Hickling Gray Associates prepared in 2011, as the projected income there was clearly based on full liveries. I am satisfied that the Council did not intend to mislead anyone as to the correct position. There was some confusion generally on this subject and the appellants' case was not helped by the lack of any updated business case. The critical issues in the business case went further than whether the business operated as solely DIY livery, and it was not unreasonable of the Council to present its case in the way it did.

Avoidance of appeal if right questions asked

45. The appellants pointed out that case law did not explain how the financial test applied to an established business that had experienced Covid-related difficulties. The Council's expert witness took an arguably restrictive view of the full-time worker equivalent calculation that informed the functional test. However, the witness was entitled to express his professional opinion in the way he did, based on local planning policy as he saw it. Limited weight was given to individual circumstances of the business mainly for the reason, as I found, that the test is essentially objective, on which I invited comment from both sides on case law to that effect. It was not incumbent on the Council to ask itself different questions and it is unlikely the appeal could have been avoided had that happened.

Modifying the dwelling could have led to an amended scheme being agreed

46. The Council acknowledged that the appellants were open to modifying the dwelling, but only in a limited way by removing the accommodation space in the roof. This was an inadequate mitigating measure as the size of the dwelling was still not commensurate with the holding, and it conflicted with planning policies on character and appearance.

47. The appellants were clear that it was not an option otherwise to reduce the outward form and mass of the dwellinghouse. There was thus no realistic likelihood that an amended scheme agreeable to the appellants would have resulted in withdrawal of the notice.

Whether a full or partial award of costs is justified

48. After reviewing the evidence, I am unable to find unreasonable behaviour by the Council in the appeals process such as would justify a full or partial award of costs.

Application 2

The submissions for the Council

49. A partial award of costs is sought against the appellants, associated with dealing with the ground (a) appeal; the ground (b) appeal; the aborted ground (c) appeal; and the ground (d) appeal as it relates to material change of use of the dwelling.

Ground (a)

50. This ground was unreasonably advanced as no proper evidence was presented on whether there was an essential need for a rural worker, or on flood risk. No business case was provided and no proper evidence to counter the Council's Estates and Valuation surveyor witness, who expended very significant resources researching and preparing the Council's case and responding to the Appellants' case. The latter's case changed throughout the appeal and culminated in a single page of unverified accounts without explanatory notes or verification of its provenance or accuracy. It was produced without prior notice to the Council on the resumption of the inquiry. In respect of flood risk, no proper evidence was provided, including any evidence to discharge the exception text, and satisfy both limbs of NPPF/170.

51. Thus, it was unreasonable for the appellants to pursue ground (a) without furnishing the inquiry with proper evidence on these issues.

Ground (b)

52. The appellants pursued a late-stage ground (b) making it necessary to produce a supplementary proof. Had the point been raised earlier costs would have been avoided. The Council seeks its costs of producing this supplemental proof.

Ground (c)

53. The appellants originally pursued ground (c) in respect of the driveway, hardstanding, shed and greenhouse, on the basis they were lawful owing to permitted development rights. The appellants persisted with this ground in the proof of evidence of the planning witness. The ground was rightly withdrawn on the first day of the inquiry.

54. The Council submitted in opening that when the shed, greenhouse and hardstanding were constructed, the house was not lawful. Thus, article 3(5) of the GPDO prevented permitted development (PD) rights from applying to the shed, greenhouse and hardstanding at the point they were constructed. The Council set out this argument in its statement of case before the inquiry. PD Rights could not be applied retrospectively, even if the dwelling were lawful pursuant to ground (d) its use as a dwelling was not, so PD Rights did not apply. Thus, this ground was always bound to fail and should not have been pursued in the first place. The Council incurred costs in responding to it.

Ground (d)

55. Ground (d) was originally pursued in respect of the physical fabric of the dwelling and the material change of use (MCU), a position maintained in the proofs of evidence, albeit on the basis that the dwelling "*was built partially on land in use for residential purposes at least 10 years prior to the EN being served*" as set out in the planning witness proof. Plainly, a single dwellinghouse

could not partly be used for residential purposes and partly for a different use. At the inquiry it was conceded that the argument was not being maintained that the use of the dwelling was lawful owing to the passage of time. There was an attempt to resurrect the argument, and the planning witness was recalled. The witness conceded that historically there had been residential use via the caravan across the appeal site, but this was said to be only relevant for context and informed the ground (b) regarding the mixed use of land.

56. The Council committed a huge amount of resources to exploring the full planning history of the site. The Council never understood the ground (d) appeal in respect to the MCU so was forced to second guess what case might be pursued. As it happened, the argument went nowhere. Thus, costs were sought for responding to this part of the ground (d) case, ie the MCU.

The response for Mr and Mrs Hetherington.

Ground (a)

57. The business case was shown by accounts over the 11 years it operated, and evidence from Mrs Hetherington as to her typical working day and forecasts for the business. The most up-to-date accounts were produced by the same accountant, the Accountancy and Administration Bureau as in previous years 2013-2022, with no criticism of those accounts at all. The Council was content to rely on the "headline figure" in cross examination.

58. The very significant resources spent by the Valuation and Estates surveyor is not disputed but the entire valuation evidence was on a false basis due to the poor investigation and assumptions made by officers.

59. It was not unreasonable to rely on the previous business case, updating it with fresh evidence of the business' performance. The appellants' case was not changed during the appeal based on the operation of the yard that survived personal ill-health and catastrophic impacts of Covid. The business had grown significantly since the notice was served, from 5 full liveries to 9 and continued to do so. The business was not materially different from how it was predicted to be when planning permission was granted.

60. The appellants relied on the previous flood risk assessment (FRA) accepted by the Council, and on evidence that the finished floor level (FFL) was 600mm above average site level. The flood risk had not changed since the 2017 permission, but the Council pursued the flood risk reason for enforcement before producing evidence of the FFL or compliance with flood risk measures. The required level of +600mm AOD included some tolerance and if the FFL was 75mm or other smaller figure then it could be raised.

Ground (b)

61. The ground (b) appeal was made in response to the allegation of a mixed use. The Inspector allowed it to proceed which was the correct approach on enforcement appeals. The timing made no difference to the decision to respond with a proof as opposed to dealing with this ground at the inquiry, and this supplementary proof inexplicably also dealt with the second enforcement notice.

62. The Council understood there was "some mix of uses" and that residential use seemed to occur outside the area originally granted permission for residential

use but failed properly to consider the matter before issuing the notice. Had it done so, it would have been aware there was no such mix. The supplemental proof on ground (b) did not advance its case but confused matters.

Ground (c)

63. Ground (c) was made in relation to ancillary residential development, clarified to the Council by e-mail in October 2023. It was an issue already conceded three months before proofs were written, and as addressed by the Council's witness, this took less than half a page.

Ground (d)

64. Ground (d) responded to the flawed allegation of a mixed use, it did not take place. The Council failed to properly investigate the history of the site, and this was not a recoverable cost. The parties simply disagreed on the implementation of the 2011 permission as to when the unauthorised residential use of the land started, and how this affected a MCU. The Council had to address this argument in any case.

Generally

65. The Council pursued this case relentlessly and in an oppressive manner. The appellants faced loss of their home, business, future livelihood, substantial investment and the cost of complying with the notice. The cost of the appeal over 6 days weighed heavily on them including financially. That they should have produced a business case, a full rebuttal of the Council's spurious financial evidence, a fresh FRA and a landscape assessment, necessitating more experts, was cynical.

66. The appellants had not behaved unreasonably (in the ordinary meaning of the word) defending the wide-ranging allegations by updating existing information that was reliable and relevant and focussing limited resources on relevant representation.

Reasons

Ground (a)

67. The lack of an up to date full business case and FRA contributed to a finding on the balance of probabilities that the dwellinghouse conflicted with planning policy including local plan policies relating to flood risk and the requirement to demonstrate an essential business need for the dwelling. An objective test was applicable to business need and I found that the Council's valuation evidence was persuasive.

68. That said, it would be unfair to characterise the appellants' case as devoid of proper evidence. Mrs Hetherington gave direct testimony and spoke to the documentary evidence produced by her relating to accounts of the business. Although the evidence was given limited weight it was not improperly given and bearing in mind the appellants' limited resources, they did the best they could in the circumstances. Some evidence was late but no significant adjournment was necessary in the context of a fairly lengthy inquiry which had to pause for several weeks due to Mr Hetherington's ill health.

69. The Council reasonably pursued the flood risk reason for issuing the notice, asserting correctly that the dwelling was not that approved in 2017 and on

which the previous FRA had been accepted. I found that there was a flood risk that conflicted with planning policy. Absent an updated FRA the appellants struggled to prove the measures in the previous FRA were complied with in relation to the dwelling in situ. The onus was on the appellants to show on the balance of probability that the required mitigation measures had been met. In the absence of persuasive technical evidence to contradict the Council's recent physical survey, I preferred the Council's evidence. That is not to say that the appellants' case lacked substance, based as it was on interpretation of previously submitted plans, the positing of a place of safety at first floor level, a conditioned flood evacuation plan and so forth.

70. In sum, the appellants' evidence on flood risk and objectively assessed financial criteria was insufficient to outweigh other considerations but they did not behave unreasonably in submitting their case in the way they did on the planning merits of the case.

Ground (b)

71. The reference to the second enforcement notice was brief and inconsequential.

72. Arguably, there was no real point to the ground (b) appeal as the notice could easily have been amended if necessary to reflect the existence of two planning units, without causing injustice to any party, as the appellants accepted at the inquiry. In any case the decision was that there was a mixed use.

73. This ground was persisted in, and my acceptance of it was a procedural decision only made in the interests of fairness without any judgement as to its merits. The appellants' case on the longevity of the residential use in ground (d) could equally well have been put (and was in fact put) without amending the notice to show a separate planning unit of residential use. The appellants may have considered it facilitated demonstration of the ground (d) point. An appellant cannot be deprived of an opportunity to pursue a ground of appeal where technically there are rational grounds on which it might succeed, despite the likely outcome being of no real consequence. Indeed, some (limited) evidence supported a finding of two distinct areas with a different primary use which was briefly considered in the appeal decision, but it did not prevail.

74. Therefore, the Council was not put to unnecessary expense in rebutting this ground of appeal.

Ground (c)

75. For the reasons given by the Council this ground was always bound to fail and should not have been pursued. It was only conceded as such when the inquiry commenced. The Council incurred unnecessary costs in replying to the ground when it was made, although clearly it did not need to do much to rebut it.

Ground (d)

76. Part of the ground (d) case was that historically there was residential use across the appeal site considering also the temporary living accommodation sited there. Elaborate arguments were made about the supposed continuation of this residential use due to the accommodation being in breach of conditions. However, it should have been clear, had the breaches been analysed from the point of view of their effect having regard to well-established case law, that the use was a continuing breach of conditions, and not development without

planning permission, making it impossible – given the planning history - for the requisite period of immunity to accrue in favour of the appellants.

77. The Council would not have had to address this part of the ground (d) appeal had it not been made, as it was, without foundation and unreasonably. Therefore, its costs related to this part of the ground (d) appeal were incurred unnecessarily.

Summary

78. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in relation to ground (c) and (in part) ground (d). A partial award of costs is therefore warranted.

Application 3

The submissions for the Council

79. The Council limits its application to costs against the Beverley Building Society (BBS) associated with dealing with the Ground (b) appeal.

80. BBS alleged that certain points in the notice were incorrect. Ground (b) is an appeal that the matters alleged to be a breach of planning control have not occurred as a matter of fact. BBS did not assert that the allegation was factually wrong. It suggested that the dwelling accorded with the 2017 planning permission but there was no evidence of this, the dwelling substantially deviated from the approved plans. This was not a proper ground (b) appeal and the Council incurred costs in responding to it.

The response for Beverley Building Society

81. The application for costs was presented too late with no full or proper explanation as to why it was submitted so late in the day. BBS did not have the benefit of legal advice when filling in the appeal form. Its concern throughout was for the welfare of its customers.

82. On the specific ground (b) point, BBS pointed to an apparent inaccuracy in the enforcement notice that the required scheme of archaeological investigation works was not completed, Mr Hetherington having raised this with BBS.

83. BBS also denied stating, as part of the ground (b) appeal, that the dwelling accorded with the 2017 planning permission.

Reasons

84. Any building society might well have taken proper advice before completing an appeal form where it was served with an enforcement notice affecting a property on which it had lent mortgage monies. Had it done so, its case may have been more effectively made. A ground (b) appeal is confined to responding to the precise allegation of fact made in the relevant part of the notice that alleges the breach of planning control. In this case the allegation was clear on its face, and it was correct. Whether the archaeological condition had been complied with or indeed whether the dwelling complied with the planning permission in question, was of secondary importance to this issue.

85. That said, it is hard to see what additional expense the Council incurred in responding to BBS by simply replying, as it did, that there was no assertion

that the allegation in the notice was factually wrong. It did not need to do more. The evidence that the Council produced as to the variances from the 2017 permission would in any event have had to be assembled in relation to the appeals by the Hetheringtons and the point about the archaeological condition went nowhere because it was conceded by the Council.

86. Although BBS acted unreasonably in making the ground (b) appeal this did not cause the Council unnecessary expense in the appeals process.

Costs Order

87. 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 Roy Hetherington and Mrs Andrea Hetherington shall pay to East Riding of Yorkshire Council, the costs of the appeal proceedings described in the heading of this decision (Application 2) limited to those costs incurred in dealing with the ground (c) appeal and the ground (d) appeal as far as it relates to the case for immunity from enforcement based on longevity of residential use of the appeal site; such costs to be assessed in the Senior Courts Costs Office if not agreed.

88. The applicant is now invited to submit to Mr Roy Hetherington and Mrs Andrea Hetherington, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Grahame Kean

INSPECTOR