
Costs Decisions

Hearing Held on 4 February 2025

Site visit made on 4 February 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 12 March 2025

Costs application in relation to Appeal Refs: APP/W1850/C/24/3350934, APP/W1850/C/24/3350935 and APP/W1850/W/24/3356469

Land at Madley Caravan Site, Stoney Street, Madley, Hereford HR2 9NQ

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Shaun Gorman of Deerhurst Park Ltd for a full or partial awards of costs against Herefordshire Council.
 - The Hearing was in connection with an appeal against enforcement notices alleging, without planning permission, the unauthorised material change of use of land to a caravan site, and the failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
-

Decision: the application succeeds and a full award of costs is made in the terms set out in the Costs Order below.

The submissions for Mr Shaun Gorman of Deerhurst Park Ltd

1. The Appellants seeks, in the alternative, a) Full award for the entire costs incurred by the appellant in bringing all three appeals; or b) Partial award for the costs arising out of the failure to properly serve the notices, those costs flowing from the various points at which the local planning authority should have reasonably reviewed their case, and withdrawn the enforcement notices; or c) Partial award for those costs incurred as a consequence of the local planning authority issuing enforcement notices with entirely opaque reasons for issuing, unreasonably compelling the appellant to incur costs in respect of various experts (highways, acoustic).
2. The reasons given for issuing the Notices are entirely opaque, stating a reliance upon various policies without clearly stating whether there was conflict with those policies, and if so, for what reason. The reasons for issuing the enforcement notices acknowledged that the claimed impact on character and appearance could be addressed by condition, and the claimed issues relating to highways impact, noise and foul/surface water drainage were withdrawn, leaving no live substantive issue to be considered. It is difficult to determine what would have been considered at the Hearing given that all of the substantive reasons for issuing the Notices had been conceded and the LPA consented to the section 78 appeal.
3. An application was made on 12 September 2024 pursuant to section 73A of the Town and Country Planning Act 1990 (the 1990 Act) to remove or vary a

condition on a planning permission granted in 1994 (“the 1994 Permission”) providing for a caravan site, the relevant condition limiting the benefit of the 1994 Permission to Hereford and Worcester County Council. The local planning authority failed to determine the application by the target date and the applicant, Deerhurst Park Ltd, lodged an appeal on 29 November 2024 against non-determination. Prior to being notified of the appeal being valid, the local planning authority purported to grant the application on 3 December 2024. Consequently, the Council do not contest the section 78 appeal.

4. The local planning authority did not deal with the determination of the application in a reasonable or expeditious manner. The local planning authority did not commence statutory consultations until 9 October 2024, nearly one month after submission of the application. There was then a delayed decision, for which no adequate explanation has been provided, in respect of the display of a site notice, which did not occur until 21 October 2024, and which the local planning authority erroneously believed extended the statutory consultation period from 30 October 2024 to 11 November 2024, extending the purported consultation period beyond the statutory determination deadline 7 November 2024. The local planning authority did not request an extension to the determination period, nor did the local planning authority provide any adequate explanation as to why further consultation was necessary. In any event, if further consultation was considered necessary, the local planning authority were bound to carry that out within the statutory determination period, or seek an agreed extension to that period. The LPA local planning authority did neither. This was not appropriate conduct.
5. There was no contact made by the local planning authority with the applicant in respect of the substance of the application until 13 November 2024, and following the response provided on 13th November 2024, there was no further contact made by the local planning authority with the appellants’ representatives until the decision was (purportedly) issued on 4 December 2024. It is pertinent to note that the Case Officer did not visit the site until 19 November 2024, nearly 10 weeks after submission of the application.
6. The approach of the local planning authority to the determination of the section 73A application cannot credibly be described in any other way than unreasonable, the delays in determination being entirely unexplained and unacceptable, all of which occurred while there were highly relevant outstanding enforcement appeals, to which the determination of the section 73A application was highly relevant. By the end of November 2024, with no decision issued and no contact with the local planning authority, and with the enforcement appeal deadline for the submission of Proofs of Evidence and the Inquiry date impending, the appellant had no option but to appeal the non-determination of the section 73 application.
7. While the enforcement notices were in place, the appellant had no option but to appeal them. The obvious, and reasonable course of action, particularly in the context that the local planning authority both purported to grant the section 73A application and did not oppose the section 78 appeal, was for the local planning authority to expeditiously withdraw the enforcement notices. This was particularly so given that the local planning authority had no credible basis for contesting the appeals, and further given that any reasonable planning authority reviewing the evidence and arguments would be aware that they

have failed to serve the Notices in accordance with the statutory provisions. There would then have been no need for a Hearing. The earlier the Notices were withdrawn, the less costs would have been incurred by the appellants.

8. It is submitted that the local planning authority have:
 - a) Failed to properly serve the Notices resulting in an unnecessary appeal against those Notices, one which would not have proceeded in any event given the consent to the s.73A application and s.78 (full award);
 - b) Failed to substantiate some or all of the reasons for issuing the Notices, resulting in the Appellant unreasonably incurring the cost of unnecessary expert reports (partial award);
 - c) Failed to adequately and competently review their case in respect of the failed service of the Notices, a matter raised on multiple occasions throughout the appeal process from the initial appeal through to the Inspector's Agenda issued the day before the Hearing (partial award in respect of all costs incurred from the point at which it is determined that the LPA were unreasonable in not withdrawing the Notices);
 - d) Failed to expeditiously and reasonably determine the s.73A application, occasioning the pursuit of an unnecessary appeal.
9. Put in its simplest form, the local planning authority failed to properly serve the Notices. The statutory provisions are clear and uncomplicated and the local planning authority, acting competently should have been aware of the statutory burden upon them.
10. The local planning authority failed in exercising that statutory burden, resulting in the Notices being quashed pursuant to the ground (e) appeals. The failure to properly and lawfully serve the enforcement notices is unreasonable behaviour which has resulted in unnecessary appeals against the flawed Notices. The exercise of issuing the enforcement notices, which the appellant was compelled to appeal, and then failing to properly serve the enforcement notices, has put the appellant to the unnecessary expense of the entire appeal. It is no answer to say the Hearing would have gone ahead in any event, as the local planning authority did not resist the section 78 appeal, an appeal that would not have been brought had the LPA determined the section 73A application in time, which would have resulted in the sought consent.
11. The local planning authority was under a statutory duty to properly investigate the alleged breaches of planning control, to properly determine the owners and occupiers of the site, to determine that it was expeditious to issue the enforcement notices and then to properly serve the enforcement notices on all concerned. The local planning authority did not serve the enforcement notices on all concerned, breaching their statutory duty which has resulted in the enforcement notices being quashed. But for that breach of statutory duty, the appellant would not have incurred the costs of the appeals.
12. A breach of a basic and familiar statutory duty is unreasonable behaviour on the part of the local planning authority, and that unreasonable behaviour has resulted in the appellants incurring the costs of the entire appeal process. An award of costs in respect of the entire costs incurred in the appeals should be made against the local planning authority in favour of the appellants.

13. In the alternative, should the Inspector determine that the breach of the basic and fundamental statutory duty upon them by the local planning authority does not amount to unreasonable behaviour, then the appellant seeks a partial award of costs.
14. Firstly, the reasons for issuing the Notices were entirely opaque and the local planning authority have failed to substantiate any planning harm arising out of using the appeal site as a caravan site. There was never any credible or sustainable highways or acoustic reasons for issuing the Notices and it was unreasonable of the local planning authority to require the appellant to go to the expense of preparing expert evidence to deal with both illusory issues. The costs incurred by the appellant in preparing the elements of his case in respect of highways impact and/or acoustic impact should not have been incurred and there should be a partial award of costs made in respect of either or both of those matters.
15. Secondly, the local planning authority have failed to adequately review their case, as they are required to do, throughout the appeal process. Had they done so then, acting reasonably, they should have withdrawn the notices and considered whether it was appropriate to properly and lawfully serve fresh notices. That approach would not have prejudiced the local planning authority in any way, but the contrary approach has resulted in likely prejudice to occupiers of the appeal site to the extent that the Notices have been quashed. That behaviour is unreasonable behaviour on the part of the local planning authority which has resulted in the appellant incurring wasted costs.
16. The local planning authority had several opportunities to review their case:
 - a. At or around the time the enforcement appeals were lodged – 29 August 2024, alerting the LPA to the failure to properly serve the Notices;
 - b. At or around any point at which the local planning authority were made aware by the appellant of the failure to properly serve the Notices: for example, express requests were made to the local planning authority on 18 September 2024 and 30 September 2024, both of which should have alerted the local planning authority to their statutory failure and the local planning authority, upon proper review of their position, should if acting reasonably have withdrawn the Notice. A detailed consideration of the correspondence reveals a litany of failure by the local planning authority in the manner in which they have approach the enforcement issues at the appeal site;
 - c. Following the first Case Management Conference (CMC) on 9 December 2024, at which detailed evidence was requested as to the service of the Notices with regards to the requirements of section 329 and the provisions at section 176(5) of the 1990 Act
 - d. Following receipt of the Matthew Green's Proof of Evidence on behalf of the appellant
 - e. Following the second CMC on 24 January 2025, after which it should have been plainly and abundantly clear that there had been a failure to properly serve the enforcement notices

- f. Following receipt of the Inspector's Hearing Agenda provided on 3 February 2025 which the issue of withdrawing the Notices was raised once again. Even at that late stage, a withdrawal of the Notices would have prevented the costs of the Hearing being incurred by the appellant.
17. Acting reasonably and conducting a proper and adequate review of their case at any one of the points in time set out above, as is required by the Planning Practice Guidance (PPG) and a matter of commonsensical and reasonableness, the local planning authority could and should have withdrawn the enforcement notices, thus preventing the appellant from the wasted costs of pursuing appeals against Notices that were not lawfully served. The local planning authority could at any point have properly reviewed their case, but they were specifically asked to do so at each of the points in time set out above. The appellants have been proactive throughout in alerting the local planning authority to their error, but the local planning authority chose to blithely and unreasonably ignored those warnings.
18. A partial award of costs should be made against the local planning authority in favour of the appellant from any of the points in time, as set out above, where it should have become clear to the local planning authority, acting reasonably, that the enforcements notices needed to be withdrawn. All costs incurred post that point in time have been unreasonably incurred by the appellants.
19. It is no answer to say that there would have been an appeal/Hearing in any event in respect of the section 73A application. The local planning authority purported to grant that application, after the time limit expired, and consented to the appeal. The local planning authority were perfectly able to grant that application within the applicable time limit, which would have negated the need for an appeal, which in any event if limited to the section 73A application would have been addressed by written representations.
20. Finally, the appellant seeks the entire costs associated with the section 78 appeal. The local planning authority failed, without explanation, to expeditiously determine the section 73A application, particularly in the context of ongoing and highly relevant appeals against the enforcement notices, with an imminent deadline for the submissions of Proofs of Evidence and an impending Inquiry date. Purporting to grant the section 73A application some four weeks after the determination deadline, having not agreed an extension or sought to communicate with the appellant between 13 November and 4 December 2024 when the decision was issued, was entirely unreasonable, and was the direct cause of what was ostensibly an entirely unnecessary appeal. The section 78 appeal, which was uncontested, was occasioned entirely by the unreasonable behaviour of the local planning authority and all costs associated with that appeal amount to wasted costs, which the local planning authority should be made to refund to the appellant.
21. A change from a Gypsy & Traveller site to a general residential site is not, per se, a material change of use. It is a matter of fact and degree, dependent upon the nature of the extant permission and the circumstances of the land in question. Pursuant to the Caravan Site and Control of Development Act 1960 and the 1990 Act, a caravan site is a caravan site irrespective of whether occupied by members of the travelling community. The local planning authority are entirely misconceived in their very bold assertion that such a change is a material change of use, an assertion contrary to leading authority.

Sullivan LJ in *Wall v Winchester City Council & SSCLG* [2015]EWCA Civ 563, when considering whether a change from a travelling show persons site to a residential caravan site was a material change of use, did not go so far as to say it would be a material change of use, he merely said it may be and it was incumbent upon the Inspector to consider whether it was, in the specific circumstances of the case.

22. It may be that such a change is a breach of condition, but that was never alleged in this appeal, and in any event, the local planning authority did not have one shred of evidence that the appeal site was not occupied by Gypsies & Travellers and merely alleged a material change of use to a caravan site, which can take many lawful forms. The appellant did not avoid addressing this matter, it was addressed to the extent it was relevant in both evidence and opening, but more importantly, the local planning authority did not allege in the Notices that the claimed material change of use was to a residential caravan site used by members of the settled community. They may wish the alleged breach of planning control to be interpreted in that way, but that is not what the Notices allege.
23. Considered in the round and through the eyes of the reasonable person, the local planning authority should have withdrawn the enforcement notices in a timely and expeditious manner, following proper and reasonable review of the parties' cases, and should have granted the section 73A application, to which they had no objection, in an expeditious and timely manner, particularly given its relevance to the enforcement appeals. Both actions would have avoided the costs of the Hearing, and in unreasonably not properly serving the Notices, not granting the section 73A application in a timely manner and in not adequately and reasonably reviewing their case, the local planning authority have caused the appellant to incur wasted costs. It was entirely unnecessary for these appeals to have proceeded to a Hearing, such being a consequence of the unreasonable behaviour of the local planning authority, precisely the circumstances in which an award of costs in favour of the appellant is justified.

The response by Herefordshire Council

24. It is not accepted that all of the substantive reasons for issuing the enforcement notices were conceded such as to render the Hearing pointless. The local planning authority relies on the Opening provided at the start of the Hearing in terms of the live points of dispute. The local planning authority's reasons for continuing with the enforcement notices were discussed in length at the first part of the Hearing, within input by Ms Gibbons. It is acknowledged that common ground and compromise had been reached with respect to many issues. However, that was only possible where the appellant provided relevant information. For example, the local planning authority could only reach a view on environmental impact or the acceptability of drainage once the drainage report had been provided.
25. This was a case of considerable legal and factual complexity. The enforcement notices and section 78 appeal raised issues that merited a Hearing and detailed consideration. The local planning authority's overall approach with respect to those issues and the arguments presented was reasonable.

26. It is acknowledged that the enforcement notices have been quashed under ground (e). However, it does not follow that there should be an award of costs against the local planning authority.
27. The local planning authority sought to obtain information regarding site residents through Planning Contravention Notices (PCNs). The appellants' planning agent declined to provide any such information. In the absence of names of occupiers of the caravans, any notices would necessarily have to be addressed to "the occupier". This was what was done. As was explained at the Hearing, the enforcement notices addressed to the occupiers were handed directly to a third to half of the residents. The enforcement notices were placed in envelopes with clear windows and sellotaped to caravan doors. Conversations took place between site residents and officers on site when notices were served. Owing to the escalating nature of those conversations, officers decided to leave but this was done only once all enforcement notices had been distributed.
28. It is acknowledged that the enforcement notices addressed to the owners were not served on the caravan occupiers within the timeframe set out under the 1990 Act. However, steps were taken to provide copies of that enforcement notice to all occupiers. Site Notices advertising the Inquiry were displayed properly. The similarities between the two enforcement notices meant that there was no difference in substance in the allegation, the only difference being with regard to the step to be taken. Ultimately, no caravan occupier sought to appeal either enforcement notice, attend the inquiry or otherwise make themselves known to The Planning Inspectorate or the local planning authority. This despite the conversations which were held on site with residents about the enforcement officers and the right of appeal by officers serving the occupier enforcement notices.
29. In the circumstances, where the enforcement notices which referred to steps for the occupiers in its requirements section was personally served in so far as was possible, and conversations were held on site with residents about the enforcement notice and the right of appeal, the local planning authority's maintained resistance of the service ground of appeal was reasonable. The fact that the argument did not prevail is not an indication of unreasonableness but rather a reflection of litigation risk. The question of substantial prejudice is a question of discretion-based judgment. In this case the local planning authority's arguments did not find favour with the Inspector but that is not to say they were so misconceived as to be unreasonable.
30. The local planning authority did adequately investigate the breach of planning control on site. The fact that other information and evidence has come to light through the course of the Inquiry (now Hearing) does not demonstrate that the initial investigation was inadequate or that the enforcement notices were ill-founded. The provision of further evidence and the review of that evidence is an ordinary part of the appeal process.
31. The local planning authority took the additional step of submitting a proof of evidence from Ms Gibbons in order to assist with clarifying the points in dispute. That proof of evidence pro-actively addressed some of the Inspector's questions released following the second CMC in order to clarify the local planning authority's position ahead of the Hearing. This was done to assist the appellant and Inspector, despite the direction that these questions were to be

addressed in opening statements. The local planning authority has been constructive in its approach to this case.

32. The local planning authority's investigations were hampered by the appellants' refusal to answer its PCNs in full and the absence of information (despite requests) regarding drainage arrangements on site. In order to understand impact on the SAC, it was necessary to understand drainage arrangements. The appellants' own drainage expert has confirmed that drainage arrangements are not in accordance with the 1994 permission being in a different location and relying on a new interim approach pending a permanent solution. The appellants' drainage report therefore suggests a condition to bring drainage arrangements up to date and make them appropriate for the site. The evidential picture has evolved through this appeal.
33. It is notable that despite the PCN response advising that the Site was a "Caravan Site for gypsies for up to 20 caravans" and the first CMC note directing that the appellant provide evidence of resident's Gypsy & Traveller status, no such evidence has ever been provided. As the local planning authority set out in Opening, a change from a Gypsy & Traveller site to a general residential caravan site for non- Gypsy & Travellers would be a material change of use (as the *Old Coal Yard* appeal decision corroborates). This is one issue the appellants have avoided addressing in evidence.
34. It was not unreasonable for the local planning authority to reference highways impact or acoustic impact. As the Expediency Report explains, the site was included in the additional sites consultation that was carried out as part of the examination of the Travellers Sites Development Plan Document. However, the site was not taken forward due to issues arising from its proximity to an industrial estate in relation to the impact of noise on the future residents of the site and the potential conflict with commercial vehicles entering and leaving the adjoining estate. There was an evidential foundation for the local planning authority's position that these issues were planning constraints on the use of the site.
35. The appellants' contention that the local planning authority did not review their case is at odds with their acknowledgment that it responded to their evidence on highways, noise and drainage and the submission of a further proof from Ms Gibbons. Whilst there was a period of delay owing to the unavailability of the original witness for health reasons, and the need for a different officer to become acquainted with the case, the case was reviewed promptly, the Statement of Common Ground (SoCG) was progressed, and the local planning authority's review of the drainage proof and SAC issue were shared with the appellant as soon as possible.
36. The local planning authority has sought to review their case throughout the evolution of this appeal. It is acknowledged that the service ground resulted in the quashing of both enforcement notices. However, the local planning authority's arguments under this ground were not unreasonable (as set out above). It is noted that the Inspector felt it was necessary to hear discussion of this point at the Hearing and to consider in detail the evidence of officers who served the enforcement notices. Following that session, the local planning authority's case on this issue was not preferred but that does not mean the position was unreasonable. Further and in any event, the local planning authority's response to this ground was hampered by the unavailability of its

intended witness during the period immediately prior to the hearing. Considerable efforts were made to work around this, including securing the attendance of other local planning authority officers.

37. There was no need to contest the section 78 appeal. The appellant could have relied upon the decision issued by the local planning authority and withdrawn the appeal. The local planning authority confirmed in the first CMC and subsequently that it stood by that decision. The appellant nonetheless decided to continue with the appeal incurring the associated expense. In any event, the decision to grant the section 73 application was made on 3 December 2024 and communicated on 4 December 2024. It is difficult to see what expense the appellant could have incurred during this very limited period, particularly when the arguments raised regarding the 1994 permission had already been ventilated under the section 174 appeals and both parties agreed the enforcement notice appeals would need to consider the legal status of the 1994 permission and its consequences.
38. At an early stage, before the enforcement notices were issued, the appellant was invited to make a planning application so that the use of the site could be managed, and appropriate conditions could be imposed. The invitation was not taken up. The revision of conditions attached to the 1994 permission through this appeal demonstrates that such an application would have been a prudent step. On any view, there was a need to consider the development management of the site in a modern context.
39. For these reasons the Council respectfully submits that there is no basis for a costs award, whether full or partial, in the appellant's favour.

Reasons

40. The PPG advises that, irrespective of the outcome of the appeal, costs may only 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 PPG indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The PPG states that the right of appeal should be exercised in a reasonable manner and goes on to provide an example of unreasonable behaviour which may result in an award of costs against a local planning authority. These examples include relying on vague, generalised or inaccurate assertions about a proposal's impact, and not reviewing their case promptly following the lodging of an appeal (including against non-determination of a planning application), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
41. I have no doubt that the Council fully investigated (to the extent to which it was able) the alleged breach of planning control, and that it was perfectly entitled to find it expedient to issue the enforcement notices. It does appear to me that the Council's investigations were hampered by the appellants' refusal to answer the PCNs in full, particularly in terms of the Gypsy & Traveller status of the occupiers of the caravans. This extended to not providing evidence of residents' Gypsy & Traveller status as requested at the first CMC. In that context, it was in my view no coincidence that none of the occupiers appeared at the Hearing, notwithstanding that the appellant originally indicated that up

to 21 of the occupiers would be called to give evidence to the Inquiry (as originally scheduled to be).

42. Other than in relation to the appeal on ground (e), I am satisfied that the Council did not act unreasonably at any stage during the appeal process itself. The local planning authority did review and revise its evidence in relation to highways, noise and drainage in direct response to information as and when it became available. The Council accorded with the advice in the PPG in that respect. I am also mindful that there was an unavoidable period of delay owing to the unavailability of the Council's original witness, and the need for a different officer to become acquainted with the case.
43. However, there is a reasonable expectation that every local planning authority should be capable of serving an enforcement notice correctly. The legislation in that respect (i.e section 329 of the 1990 Act) is long-standing, clearly set out and uncomplicated. In this case, I suspect that the problems that did arise in no small part stemmed from the Council's decision to issue two enforcement notices against the same breach of planning control, directed separately at the owners of the site and the occupiers of the caravans on the site. In my view, that additional level of complexity was a key factor in the Council's failure to serve the notices correctly. But, ultimately, whilst it might be one of the reasons, it is no excuse: it should have been entirely straightforward to serve both notices correctly as required by section 329 of the 1990 Act. The Council did act unreasonably by failing to serve the notices correctly.
44. I am extremely reluctant to criticise any local planning authority, being very much aware of the pressures that they are under. I hesitate to do so now. However, on this occasion, the warning signs were writ large from the very outset and the Council simply ignored them. The appellant indicated to the Council in writing that the notices had not been served correctly on a least two separate occasions. I completely fail to understand why the Council did not thoroughly review its position there and then to ensure that the notices had been served correctly. I can only assume that it did not do so. Otherwise, it would surely have discovered that the appellant was correct and that the notices were not correctly served.
45. I had been provided with copies of the appellant's written communications in this respect as part of the evidence before me. This alerted me to the possibility that the notices might not have been correctly served. Even from the evidence before me at that time, it appeared that the appellant had a valid point. However, in the interest of fairness, I wanted to provide the Council with an opportunity to explain in more detail how the notices were served.
46. Accordingly, I indicated at the first CMC that I required a detailed explanation in the Council's Proof of Evidence as to how the notices were served. I even identified in the CMC Agenda that I required this to explained having regard to the requirements at section 329 of the 1990 Act. The CMC procedure is not concerned with the merits of parties' respective cases but I fully expected that the Council would 'take the hint', look again at how the notices were served and withdraw the enforcement notices. But this was not done. My assumption was then that the Council must have been confident that the enforcement notices had been correctly served on the basis of evidence then not before me, and that this would all be explained in the Council's Proof of Evidence. This was not done either.

47. At the second CMC, it was indicated that additional information on these matters was to be provided by the Council to the appellant and The Planning Inspectorate no later than Wednesday 29 January 2025. When that information came in, it still did not provide the details I was looking for, such that I asked if the two enforcement officers who personally served the notices could be present at the Hearing itself. The two enforcement officers duly attended the Hearing (for which I was grateful) and explained in detail exactly how the notices were served. Unfortunately, it was immediately apparent from that explanation that the notices had not been served in accordance with the requirements of section 329 of the 1990 Act (hence there was no need for me to take an adjournment to consider the matter)¹.
48. The salient point is that I had requested that information to be provided at the first CMC, some two months previously (and the appellant a few months before that). Had that information been provided at Proof of Evidence stage, as I had requested, I would have indicated early in January 2025 that the notices had not been correctly served and suggested that the enforcement notices be withdrawn then. The need for a Hearing could have been avoided completely. I recognise that the unavailability of the Council officer originally dealing with this case may have been a factor at times, but ultimately this does not explain the continued failure to confront this matter throughout the five months or so that the appeal process has been ongoing.
49. The PPG indicates that a local planning authority will be a risk of an award of costs by not reviewing their case promptly following the lodging of an appeal. In this case, the Council's failure goes far beyond that: the Council failed to review its case despite twice being put on notice by the appellant that the notices were not served correctly, and despite being alerted to the very section of the 1990 Act at issue at the first CMC.
50. Reading the CMC Agenda 'between the lines', so to speak, it should have been apparent to the Council that there was an issue here. At the very least, this should have prompted a comprehensive review of the Council's position against section 329 of the 1990 Act, posing the very same questions that I asked at the Hearing. Had the Council done so, it would surely have discovered of its own accord why the notices were not served correctly and withdrawn the enforcement notices straight away. There is no getting around it: the Council acted unreasonably by not withdrawing the enforcement notices well before the Hearing opened. It had numerous opportunities to do so. It took none of them.
51. The Council then compounded its error in not withdrawing the enforcement notices by not determining the section 73A application in a timely manner. The salient point here is that the consideration of the section 73A application was ongoing against the background of highly relevant appeals against the enforcement notices, with an imminent deadline for the submissions of Proofs of Evidence and an impending Inquiry date (as then scheduled to be).
52. In these circumstances, it seems to me entirely logical (not to say an obvious imperative) to ensure that the section 73A application was determined in an

¹ I hasten to add that I make absolutely no criticism of the two enforcement officers in this respect, whom I am sure carried out their duties to the best of their ability in what were no doubt challenging circumstances and in which their own safety was paramount.

expeditious and timely manner, such that this should have been afforded at least a degree of priority. I have great difficulty in reconciling that obvious need for urgency with the Council's actions, in particular not commencing statutory consultations until nearly one month after submission of the application; the delay in displaying the site notice; and the Case Officer not visiting the site until nearly ten weeks after submission of the application. Against the backdrop of an impending Public Inquiry in relation to the same site, that lack of urgency is at the very least inexplicable and in my view unreasonable.

53. This was especially the case as the Council was minded to grant planning permission in any event. Had it done so and issued a planning permission whilst the application remained in its jurisdiction, then there would have been no need for the section 73A application to have been considered at the Hearing. In the event, the appeal was lodged (and was valid) before the Council determined the application. By the time that the Council purported to determine the application, jurisdiction to do so has switched to the Planning Inspectorate. From that moment on, the Hearing became unavoidable.
54. The PPG explicitly states that, if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. The PPG goes on to explain that, in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the relevant period. If an appeal in such cases is allowed, the PPG says, the local planning authority may be at risk of an award of costs, if the Inspector or Secretary of State concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. The PPG indicates that such a decision would take into account any unreasonable behaviour on the part of the appellant in causing or adding to the delay.
55. The corollary of the above is that it was entirely within the Council's gift to avoid the need for the Hearing altogether. Two things needed to happen for the Hearing to have been avoided: the enforcement notices to be withdrawn, and the section 73A application to have been determined in a timely manner. Both were eminently achievable. Neither happened. The Council acted unreasonably in both these respects.
56. The PPG is very clear: costs may only 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. In this case, the local planning authority acted unreasonably by (a) failing to take any of the numerous opportunities open to it to review its position regarding the service of the enforcement notices (b) failing to compare the service of those enforcement notices against the requirements at section 329 of the 1990 Act, even when specifically drawn to its attention (c) not withdrawing those enforcement notices and (d) failing to determine the section 73A application in a timely manner. This led to the appellant to incur unnecessary and wasted expense preparing for and attending a Hearing that really ought not to have taken place. Both the elements required by the PPG for an award of costs are

therefore in place, such that an award of costs in favour of the appellant is justified.

Costs Order

57. 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 Herefordshire Council shall pay to Mr Shaun Gorman of Deerhurst Park Ltd the full costs of the entire appeal proceedings described in the heading of this decision (APP/W1850/C/24/3350934, APP/W1850/C/24/3350935 and APP/W1850/W/24/3356469); such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Herefordshire 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.

Paul Freer
INSPECTOR