



Costs Decision

Site visit made on 30 January 2025

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Costs application in relation to Appeal Ref: APP/Y2003/C/24/3339213

- 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 Michael Matthews for a partial award of costs against North Lincolnshire Council.
- The appeal was against an enforcement notice alleging the unauthorised erection of buildings and of making an unauthorised change of use of land to storage purposes.

Land adjacent to Holly Lodge, West Hann Lane, Barrow Haven, Barrow upon Humber, DN19 7HD

Decision

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

Background

2. 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 case for the appellant

3. The appellant's claim for costs is predicated on the fact of an earlier notice having been issued, in April 2022, and appealed (under reference 3299814) and then withdrawn by the Council following commentary from the Inspectorate. The present enforcement notice was subsequently issued, with another appeal (the present one) being brought against it. The appellant's case is essentially that the fact of two notices and two appeals relating to the same development has resulted in unnecessary duplication of effort in this appeal meaning there has been wasted expenditure.

The case for the Council

4. The Council say that the first enforcement notice was not considered to be incorrect at the time of service, and that only slight changes to the wording are found in the present notice. Essentially the Council deny that any additional correspondence arising out of the fact of the second appeal will have been anything other than very slight because there is no fundamental difference between the two appeals.

Reasons

Whether 'related' appeal costs

5. The first issue arising is that the appeal costs are sought in this appeal, whereas the finding of unreasonable behaviour I am asked to make essentially relates to a

different enforcement notice. Substantively, it appears that the 'unreasonable behaviour' by the Council claimed by the appellant lies in the drafting of a defective, but earlier, enforcement notice that was the subject of a different appeal producing abortive costs when that notice was withdrawn. As a result of this I questioned with the appellant whether the present costs application ought to relate to that earlier appeal rather than to this one.

6. The Planning Practice Guidance ('PPG') is clear that costs applications may relate to events before the [existing] appeal was brought, although costs that are unrelated to the [existing] appeal are ineligible. The Council do not take any point about this, and the appellant points out that the wasted costs of the first appeal could not fairly be alleged or crystallised unless and until a further enforcement notice was served. Broadly I accept the force of that submission, and that the abortive efforts made in bringing the first appeal are related to the present appeal, as envisaged by the PPG.

Whether unreasonable behaviour

7. Neither party has told me exactly what it was that the Inspector dealing with the previous appeal found to be wrong with the earlier notice, or how the existing notice differs from it. Both parties say the notices each raise the same alleged breaches of planning control. The Council say that the withdrawal of the earlier notice was recommended by PINS due to what was perceived as a requirement of the notice that would not wholly address the breach alleged. Assuming that this summary is accurate, it appears to identify an issue of under-enforcement arising out of the previous notice rather than any question going to the validity of the notice. A notice found to be null or invalid might clearly indicate unreasonable drafting.
8. Nonetheless, if a local planning authority intend to remedy all the alleged breaches of planning control within the corners of a notice then they can be expected to draft a notice that would achieve that. I infer, from the withdrawal of the earlier notice, that that was what the Council intended to do but that the earlier notice would have failed to achieve that outcome. I would not expect any appellant to draw attention to any question of under-enforcement during an appeal process, for obvious reasons.
9. The Council say that the present notice contains 'only slight changes to the wording' but I infer that, even if slight, those changes will have constituted the significant difference between a notice that under-enforces the breach of planning control and one that does not. On the limited information before me, I find that the failure of the Council to draft a notice that achieved its intended purpose to remedy the whole of the alleged breach, and resulting in its later withdrawal of that notice, will have amounted to unreasonable behaviour.

Whether resulting in wasted costs

10. It follows that, had the previous notice been drafted without defects (or had the Council accepted an outcome of under-enforcement), no second notice or appeal would have been necessary. To the extent that the appellant has had to duplicate or repeat his costs in bringing the appeals I find that those costs have been wasted.
11. Had the first enforcement notice been adequately drafted (and thus the Council's unreasonable behaviour not occurred) then it is the additional costs of the present appeal that would have been unnecessary. It would not be appropriate for me to award any costs of the first appeal because that is not the appeal now under

consideration. Clearly, as the appellant points out, however, the wasted costs of the present appeal can only be calculated by reference to the costs also incurred in that earlier appeal which have been unnecessarily duplicated by this one.

Conclusion

12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the unnecessary duplication of costs arising from the two appeals and a partial award of costs is therefore warranted.

Costs Order

13. 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 North Lincolnshire Council shall pay to Mr Michael Matthews the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in duplicating or repeating the costs expended in bringing an appeal against an earlier enforcement notice issued on 27 April 2022, considered under reference 3299814 before being withdrawn; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to North Lincolnshire Council details of those costs with a view to reaching agreement as to the amount.

Laura Renaudon

INSPECTOR