



Costs Decisions

Site visit made on 4 March 2025

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Costs applications in relation to Appeals Ref: APP/W1145/C/24/3355161 & APP/W1145/C/24/3355162

Land at The Laurels Inn, Petrockstowe, Okehampton EX20 3HJ

- 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 appellants' application is made by Mr Paul Johnson & Mrs Lorraine Johnson for a full award of costs against Torridge District Council.
 - The Council's application is made by Torridge District Council for a full award of costs against Mr Paul Johnson & Mrs Lorraine Johnson.
 - The appeal was against an enforcement notice alleging operational development consisting of the change of use of building from a mixed use of a public house and private dwelling to a private dwelling.
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Decisions

1. The appellants' application for an award of costs is allowed in the terms set out below.
2. The Council's application for an award of costs is refused.

Preliminary matters

3. The appellants seek a full award of costs on grounds that mainly stem from the service and drafting of the enforcement notice ("the Notice"). The Council do not specify whether their application is for a full or partial award, but the grounds are focussed on effects in the change of the appeal procedure and behaviour associated with progressing a Statement of Common Ground ("SoCG"). This application, therefore, appears to be for a partial award, but nevertheless I have considered the parties' behaviour in respect of the various parts of the process and the appeal overall.

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.
5. I have found, in my main decision, that the Council served a defective enforcement notice that is incapable of correction. Upon service, the appellants advised the Council that they believed the Notice to be defective and I raised my own concerns with it early in the appeal process. Notwithstanding this, and while accepting that there were errors that needed correction, the Council continued to defend the Notice on the basis that I could correct the defects.

6. My ability to correct an enforcement notice is dependent on whether injustice would be caused to the appellants or the local planning authority. That is, ultimately, a matter for my judgement and so unreasonable behaviour would not automatically occur in making a case that corrections could be made. The Council has confirmed that it took legal advice and, following that, could not see any obvious reason why injustice would occur.
7. While that was not my finding, I did find that if the only defect was in the description of the alleged breach of planning control, a correction may be possible. That is because, notwithstanding the appellants' submissions on the point, it is possible for a reasonable reader to understand what was being enforced against.
8. However, I identified defects and a lack of clarity through the remainder of the Notice. Importantly, this included the requirements, where there is uncertainty about what needs to be done to comply with the Notice. The problem here is not that the requirements cannot be understood by a reasonable reader, but that it is uncertain whether only the specified matters are required to be done. Furthermore, introducing consistency between the allegation and requirements, and clarity to the wording, would produce a vastly different enforcement notice that could cause injustice to the appellants.
9. In part, that arises because the purposes of the Notice are not clearly set out. Reasons for the issue of the Notice are given that identify a breach of planning control that has no policy support, is not immune from enforcement action, and that action is necessary to maintain the effectiveness of the planning system. However, that could apply equally to a scenario where a Council was seeking to remedy the breach of planning control or seeking to remedy any injury to amenity that was being caused.
10. As I have noted in my Appeal Decision, it is likely that the appellants (or any other reasonable reader) could have deduced from the Notice, especially in the context of the planning history, what the Council was trying to achieve. It is fair to say that, in seeking to undo the alleged breach of planning control (if there has been one), the appellants would know very well what they had done. It is not uncommon for an enforcement notice to require land to be returned to its original condition, this being agreed between the parties upon compliance rather than at appeal stage. But the lack of specific reference to some parts of the building and the specific exclusion of others is confusing.
11. It is not reasonable to expect the recipient of an enforcement notice to need to read between its lines to work out exactly what they should do to avoid future prosecution action. Nor is it reasonable for a recipient to need to make a case and select their grounds of appeal on the basis of what the Notice might have said had it been drafted with greater clarity.
12. It may well be possible to introduce new requirements, such as those that I canvassed with the parties, that could have similar effects to those stated on the Notice. However, while the Council has made logical submissions on the appropriateness of that, it ignores the prospect that other ways of complying with the same requirement may be available, which could result in the appellants wishing to pursue different arguments or grounds of appeal.
13. It is clear to me that significant re-drafting of the main operative parts of the Notice is required. Even if the overall effect of the Notice would be similar, the appellants

would ultimately be left with a different Notice and no recourse for further appeal. Given the extent of the defects in this case, I find that the Council's service of it in the first place is unreasonable behaviour.

14. While the main focus of the appellants' case has concerned defects in the Notice, given that they believe that the matters alleged do not constitute a breach of planning control, an appeal of some form was always likely to occur. However, as it has been necessary to quash this notice at the outset, it has not been possible to proceed to consider those grounds in this case without causing injustice. Therefore, the entirety of this particular appeal process has been an unnecessary and wasted expense, as an alternative enforcement notice would have led to appeal evidence and a decision based solely on the grounds of appeal and facts of the case.
15. The appellants initially suggested that the appeal should follow the Inquiry procedure. While legal arguments could be presented through written representations or explored at a Hearing, the appeal was made, in part, on ground (d). In an early note to the parties, I suggested that it might be possible to agree some important facts that appeared (at that time) to be relevant to a ground (d) appeal in a SoCG. Such could have avoided an inquiry.
16. There remains some uncertainty in the appellants' position in respect of the ground (d) appeal and whether key dates are disputed. However, having confirmed that they would not call any witnesses at an Inquiry and presented little in the way of contested fact in their proof of evidence, I concluded that the written representation procedure would be suitable.
17. I understand that the Council may have incurred some cost in early preparation for an Inquiry, such as instruction of counsel and their attendance at my Case Management Conference ("CMC"), as well as in notification of the appeal and procedure. However, given the lack of clarity in the Notice, the appellants' evolving position that ultimately informed my decision to change the procedure, was not unreasonable.
18. During the process, there has been some attempt by the parties to narrow the areas of dispute between them. In part this stems from my suggestion that a SoCG could be used to agree any key facts. The extensive email correspondence reveals a distinct lack of cooperation between the parties and a possible overcomplication of matters. Both parties were clearly frustrated by an unwillingness of the other party to agree various points. Having reviewed the correspondence, I remain uncertain as to why, in particular, there could be no agreement over a non-exhaustive list of key areas of dispute.
19. Nevertheless, I can see that there was some confusion about what should be included in the SoCG that was not settled until the CMC. Ultimately, both parties wanted the SoCG to include different things. In such circumstances, it can be helpful for the parties opposing positions on a point to be clearly set out. It is possible to draft a SoCG on that basis, making clear what was agreed and what was not. The approach to the process, demonstrated through the correspondence, does not appear to have been helpful in this regard.
20. However, while the process may have been frustrating and time-consuming, I do not see a clear demonstration of unreasonable behaviour here. Ultimately, a SoCG needs agreement, and neither party was happy to agree to the wording suggestions of the other.

Conclusions

21. I have found that the drafting of the Notice and the uncertainty caused has led to wasted expense for the appellants in the entire appeal process. With greater clarity this appeal could have been avoided. The appellants' application for costs, therefore, succeeds in full and it is not necessary to consider, in detail, all other points made by them.
22. The appellants' approach to the appeal has been to focus on procedural matters. As the cases began to be presented in writing, little additional material has been provided in support of the main grounds of appeal. Nevertheless, it is likely that, in part, this has been driven by the uncertainties in the Notice that have hampered the appeal process from the outset. An inability to find common ground is regrettable, but not unreasonable. In this context, I have not identified any unreasonable behaviour on the part of the appellants. The Council's application is, therefore, refused.

Costs Order

23. 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 Torridge District Council shall pay to Mr & Mrs Johnson, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. Mr & Mrs Johnson now invited to submit to the 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.

M Bale

INSPECTOR