



Costs Decision

Hearing held on 2 April 2025

Site visit made on 2 April 2025

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2025

Costs application in relation to Appeals Refs: APP/V1505/C/23/3325601, APP/V1505/C/23/3325602, APP/V1505/C/23/3325603, APP/V1505/C/23/3325604. Land at Cefn Coed, Deerbank Road, Billericay, Essex, CM11 1BB

- 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 Carl Dennison for a full award of costs against Basildon Borough Council.
 - The appeals relate to appeals against two planning enforcement notices issued by the Basildon Borough Council alleging unauthorised excavations, foundations, and the erection of a building.
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Decision

1. The application for an award of costs is refused.
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.
3. The submissions for the costs applicant (Mr Dennison) and the Council were made in writing, as such there is no need for me to rehearse them in great detail here. The application is made on both procedural and substantive grounds.

Reasons

Application on procedural grounds

4. Reference is made by the applicant to a chronology of interactions with the Council from June 2021 when an application for planning permission for an outbuilding was refused. This was not appealed. Subsequently, in January 2022, the Council granted a Lawful Development Certificate (LDC) for a proposed outbuilding on the basis of it benefitting from the planning permission available within Article 3 and Class E, Part 1 of Schedule 2, to the GPDO.¹ None of this relates to procedural matters within the appeal process associated with the enforcement appeals.
5. On 3 October 2022 the Council began investigating whether the commencement of works at the appeal site amounted to a breach of planning control. The Council exchanged correspondence with the appellants/agents and carried out two site inspections, confirming on 12 October 2022 that the development being carried out did not benefit from the LDC.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

6. The Council notified the appellants on 28 November 2022 of their intention to take enforcement action against the suspected breach of planning control. From that point onwards to June 2023 the Council and the appellants/solicitors exchanged considerable correspondence, including relating to detailed matters in dispute as part of a fee-paid request within the Council's pre-application advice procedure. Throughout this period it is clear from all the correspondence that the parties were seeking to resolve matters informally if possible. As such no enforcement notice had yet been issued. Notably, however, none of this chronology of events relates to procedural matters within the appeal process.
7. The Council issued the two enforcement notices subject of the related appeals on 6 June 2023. During the appeal process both parties submitted relevant documents as required within the appeal timetable (as varied by the Inspectorate). Additionally, the parties continued to exchange correspondence over matters in dispute.
8. Following on from the above, and having regard to all of the information before me, I can find no evidence of a lack of engagement or cooperation from the Council either before or during the appeal process. The fact that the Council did not agree with the appellants on particular matters is not the same as a lack of engagement or non-cooperation.
9. Also, as set out in the related appeal Decisions the onus to substantiate factual matters under grounds in s174(b) and (c) of the Act falls to an appellant, rather than the Council. It was therefore a matter for the appellants to demonstrate the building was no more than 3m in height above ground level and single storey. As such, those facts would in any event need to be established as part of the appellants' full evidence that the development was entirely within Class E, or otherwise benefitted from the LDC. Consequently, it did not put the appellants to any greater or unnecessary work or expense than was required of them.
10. Within the appeal timetable the Council reviewed its case and jointly with the appellants produced a Statement of Common Ground. In doing so, following consultation with Historic England, they agreed there would be no adverse impact on the scheduled monument. Also agreed were a list of potential planning conditions, including matters relating to the effect on wildlife in Norseby Woods and archaeology. This helped to narrow the remaining outstanding main issues within the ground (a) appeals. As such, it appears to me that the Council kept its case under review.
11. Overall therefore, I find that unreasonable behaviour on procedural grounds resulting in wasted or unnecessary expense has not been demonstrated.

Application on substantive grounds

12. Much of the application on this basis rehearses the arguments made in the context of the grounds of appeal which I have dealt with in the related appeal Decisions.

Grounds (b) and (c)

13. The burden of proof in these grounds, tested on the balance of probabilities, lies with an appellant. For the reasons set out in the appeal Decisions I found the development in both notices to be unlawful and the grounds of appeal failed. In doing so it was then unnecessary with regard to lawfulness for me to go on to consider more detailed matters of height or whether the building was single storey.

14. Hence it was not unreasonable for the Council to allege that the development subject of the notices were breaches of planning control, and the Council substantiated its case within their submitted evidence and with regard to case law.

Ground (a)/deemed applications for planning permission

15. In brief, the main issues in the appeal on ground (a) turned on matters of planning judgment. Although I came to different conclusions to the Council on matters that were individual main issues, it was not unreasonable behaviour for them to have held a different view. In doing so they supported their case with objective analysis and evidence, and with regard to relevant planning policy and material planning considerations.
16. Overall, I concluded that the planning balance tipped in the appellants' favour resulting primarily from the weight attributed to a fallback position and other factors, which amounted cumulatively overall to very special circumstances. It is not the case that the Council failed to produce evidence to substantiate their reasons for the taking of enforcement action, or that they made vague, generalised or inaccurate assertions about the impact of the development's impacts.
17. Consequently, unreasonable behaviour on substantive grounds resulting in wasted or unnecessary expense has not been demonstrated.

Conclusion

18. Unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated and an award of costs is not warranted.

Thomas Shields

INSPECTOR