

REPORT ON A COSTS DECISION MADE BY THE SECRETARY OF STATE IN RELATION TO AN APPEAL BY MRS BARKER AGAINST AN ENFORCEMENT NOTICE ISSUED RELATING TO AN UNAUTHORISED CHANGE OF USE OF LAND FROM AGRICULTURAL USE TO USE AS GARDEN AT 19 BIDDULPH ROAD, HARRISEAHEAD, INCLUDING THE INCIDENTAL FORMATION OF HARDSTANDING, THE LAYING OF TURF AND AN ORNAMENTAL ROCKERY AND THE PLACING OF A GARDEN SHED

Enforcement Ref. No	12/00193/207C2
Enforcement Action authorised by	Planning Committee 4th June 2013
NulBC Appeal Ref	13/00023/ENFNOT
Planning Inspectorate Ref	APP/P3420/C/13/2206898
Appeal Decision_	Appeal withdrawn
Date of submission of appeal	8th October 2013
Date of withdrawal of the appeal	23rd May 2014
Date of Costs decision	15th August 2014
Costs decision	Costs award made in favour of the Council

Following the withdrawal of the appeal by the appellant (Mrs Barker) the Council made an application to the Secretary of State for an award of costs against Mrs Barker.

The full text of the Secretary of State's cost decision, on this application, is available to view on the Council's website (also as an associated document to appeal reference 13/00023/ENFNOT) and the following is only a brief summary of the Secretary of State's decision letter.

- In planning and enforcement appeals the parties are normally expected to meet their own expenses, irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.
- The decisive issue in the determination of the costs application is whether or not Mrs Barker acted unreasonably withdrawing the appeal, with the result that the Council were put to unnecessary or wasted expense in resisting the appeal. Paragraph 54 of the NPPG states that appellants are encouraged to withdraw appeals at the earliest opportunity if there is good reason to do so – for example as soon as they become aware that it stands little prospect of success – and that an award of costs can be made if the appellant withdraws an appeal without good reason. If an appeal is withdrawn without any material change in the planning authority's case, or any other material change in circumstances relevant to the planning issues arising on an appeal, then an award of costs may be made against the appellants if the claiming party can show that they have incurred wasted expense as a result.
- The only consideration, given that with the withdrawal of the appeal the issues arising on the appeal remain unresolved, is whether or not it was reasonable for Mrs Barker to withdraw the appeal when she did – after being warned by the Inspectorate of the risk of costs being awarded if the appeal was withdrawn without good reason, the setting of a date for a Public Inquiry, the exchange of Statements of case, the submission of the Council's proof of evidence, the withdrawal of two out of the three grounds of appeal and change in the appeal procedure, and the further repeated warning given to her about a risk of an award of costs in the event of the appeal being withdrawn without good reason.

- An appellant's right of appeal to protect their interest in land has to be balanced against the expectation that all parties should act reasonably and not cause others to incur unnecessary or wasted expenditure in the process.
- In this case the appeal was withdrawn some 6 months after it was submitted. Mrs Barker would, or should, have been aware that by withdrawing the appeal when she did the Council would have incurred preparation costs in resisting it, in accordance with the Inspectorate's set timetable.
- The main reason given for withdrawing the appeal was that Mrs Barker was concerned about the effect the pursuit of the appeal was having on her health. The Secretary of State sympathises if Mrs Barker is experiencing health problems and in no way wishes to appear dismissive of them. However Mrs Barker has not supported her contention of ill health with any documentary evidence, such as a Doctor's note. In the absence of such evidence the Secretary of State cannot justify refusing the Council's claim to be reimbursed for the wasted expense they incurred from the public purse in the appeal process, which was clearly caused by the appeal being withdrawn.
- Mrs Barker also cites financial difficulties as a reason for withdrawing the appeal. However she was not professionally represented and as all appeal documentation had already been submitted, there would not appear to be any reason for further expense to be incurred by her in the appeal process. The Secretary of State does not accept this as a valid reason for withdrawing the appeal.
- The Secretary of State concludes that on the evidence available he does not consider there was any such material change in circumstances, or any other exceptional circumstances, to justify the appellant withdrawing the appeal when she did, her actions amounted to unreasonable behaviour resulting in the Council incurring wasted expense in having to resist the appeal, and an award of costs is therefore made.
- To allow a nominal period for Mrs Barker to have fully considered the warning on costs that she was given on the 1st November 2013, an award of the costs incurred after 15th November is justified.
- While the Secretary of State is awarding costs against Mrs Barker for the reasons indicated above, should Mrs Barker experience any genuine financial difficulties it will be a matter for the Council to decide whether or not to pursue such costs.

Officer comments

Members will note the reasons for the Secretary of State's decision. Your officers' next step will be to submit to Mrs Barker details of the costs the Council have incurred, with a view to reaching an agreement upon the amount.

Recommendation

That the costs decision be noted.