



# The Planning Inspectorate

## Costs & Decisions Team

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Your Ref:  
Our Ref: APP/C3430/C/21/3288846  
APP/C3430/C/21/3288847  
Date: 10 November 2022

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)  
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 174 AND 322  
ENFORCEMENT APPEAL BY MR G S ANNING AND MRS C ANNING: LAND AT  
WILLOW FARM, HOLLIES LANE, PATTINGHAM, WV6 7HJ: APPLICATION FOR  
COSTS**

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities to refer to the Planning Inspector's decision letter of 28<sup>th</sup> July 2022. This confirmed the quashing of the enforcement notice issued by South Staffordshire District Council on 8<sup>th</sup> November 2021. The notice concerned a breach of planning control, namely;

*"(i) Without planning permission, the making of a material change of use of the Land, to Land used for the siting of a caravan with a wooden extension attached to the said caravan and the siting of a container unit.*

*(ii) Without planning permission, the unauthorised material change of use of the Land, to Land used for domestic residential purpose together with unauthorised operational development to facilitate the unauthorised material change of use consisting of the erection of wooden and steel mesh fencing to separate the adjoining domestic residential planning unit from the Land as marked in green on the Plan.*

*(iii) Without planning permission, the unauthorised operational development consisting of an earth bund located in the position outlined in blue on the attached plan."*

2. This letter deals with the appellants application for an award of costs against the Council as made in correspondence of 14<sup>th</sup> August 2022 and 27<sup>th</sup> September 2022 and the Council's rebuttal made in correspondence of 5<sup>th</sup> September 2022. As these costs submissions have been made available to the parties it is not proposed to summarise them. They have been carefully considered.

## **Summary of decision**

3. The formal decision and costs order are set out in paragraphs 11 and 12. The costs application succeeds to the extent that a partial award of costs is being made.

## **Basis for determining the costs application**

4. In enforcement notice 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.

5. The application for costs has been considered by reference to the Government's Planning Practice Guidance (PPG) on awards of costs (as published on the Gov.uk website under "Appeals"), the appeal papers, the written costs correspondence and all the relevant circumstances.

## **Reasons for the decision**

6. All the available evidence has been carefully considered. The decisive issue is whether or not the Council's decision to issue the enforcement notice (in the form that it was) was unreasonable in the particular circumstances with the result that the appellants incurred wasted expense in the appeal process. Particular regard has been paid to the guidance at 048 of the PPG which refers to the risk of an award in the event that an enforcement notice is not accurate. The costs application is on the basis that the Council acted unreasonably by issuing an enforcement notice which was ultimately quashed on appeal.

7. The circumstances leading to the quashing of the notice have been carefully examined. The Council issued the enforcement notice on 8<sup>th</sup> November 2021. Appeals against the notice were received by the Inspectorate on the 10<sup>th</sup> December 2021 along with the supporting documents. The appeals were made under grounds (a), (f) and (g) under the Section 174 (2) of the 1990 Act. However, as a fee was paid for ground (a) solely in relation to appeal 3288847, there was no valid ground (a) appeal made in relation to appeal 3288846. The Inspector sent an email to the Council on 12<sup>th</sup> July 2022 raising concerns that the notice was not accurate and due to the uncertainty of the Council's intentions it would be unfair of the Inspector to use her powers of correction and due to this the enforcement notice would likely be found invalid. The opinions of the parties were sought and opportunity given for the Council to withdraw the enforcement notice. The enforcement notice was not withdrawn and was therefore subsequently quashed by the Inspector.

## **Conclusions**

8. As stated above, the enforcement notice was quashed by the appeal decision of the Inspector. She did so as she felt it did not specify with sufficient clarity the alleged breach of planning control, the steps required for compliance and the land where the breach of planning control is alleged to have taken place. The Council argue in their rebuttal to the costs application that even though the notice was quashed it was not declared a "Nullity". However, the Inspector explained in her decision that whilst the notice was not a nullity it was incapable of correction so therefore is invalid.

9. In view of the evidence before him, the Secretary of State can only conclude that the Council acted unreasonably as it is their responsibility to ensure that care is taken before issuing any notice to ensure it is correct in all respects. On the evidence

before him, the Secretary of State can only conclude that the Council did not do so in this case. The Council's actions have led the appellants to incur wasted expense in appealing a notice that was later quashed. An award of costs will therefore be made.

10. As to the extent of the award, the Council have issued a revised notice on 2<sup>nd</sup> August 2022, which has also been appealed (PINS ref: APP/C3430/C/22/3306177 and APP/C3430/C/22/3306178). Therefore, it is reasonable to conclude that a certain amount of costs incurred in these appeals are re-usable in the new appeals, which remain to be decided. However, as the appellants were professionally represented, the Secretary of State is satisfied at least some quantifiable expense was incurred in the submission of these appeals. A partial award of costs will therefore be made to consider any re-usable costs in relation to the new appeals.

## **FORMAL DECISION**

11. For the reasons given above, the Secretary of State has decided that a partial award of costs against the Council, on grounds of "unreasonable" behaviour resulting in "wasted" or "unnecessary" expense is justified in the particular circumstances.

## **COSTS ORDER**

12. Accordingly, the Secretary of State for Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 174 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, **HEREBY ORDERS** that South Staffordshire District Council shall pay to Mr G Anning and Mrs C Anning, their costs of the enforcement appeal proceedings before the Secretary of State, limited to those costs that are not re-useable in relation to appeals APP/C3430/C/22/3306177 and APP/C3430/C/22/3306178; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. You are now invited to submit details of those costs to Salindra Shakespeare, Technical support Officer at South Staffordshire District Council, with a view to reaching an agreement on the amount. A copy of this letter has been sent to her.

Yours faithfully

*K McEntee*

KEN McENTEE  
Authorised by the Secretary of State  
to sign in that behalf