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## Appeal Decisions

Site visit made on 2 October 2018

**by Elizabeth Jones BSc (Hons) MTCP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 October 2018**

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**Appeal Ref A: APP/W1850/C/18/3199001**

**Appeal Ref B: APP/W1850/C/18/3199002**

**Land at 37 Scotch Firs, Fownhope, Hereford HR1 4NP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Carwyn Thomas (Appeal A) and Mrs Catherine Thomas (Appeal B) against an enforcement notice issued by Herefordshire Council.
  - The enforcement notice was issued on 28 February 2018.
  - The breach of planning control as alleged in the notice is without planning permission, unauthorised operational development in the erection of fencing.
  - The requirements of the notice are reduce the height of the fence in all parts to no more than one metre.
  - The period for compliance with the requirements is 1 June 2018.
  - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

### Application for costs

2. An application for costs was made by Mr Carwyn Thomas and Mrs Catherine Thomas against Herefordshire District Council. This application is the subject of a separate Decision.

### Reasons

3. Section 172(1) of the Town and Country Planning Act 1990 states "The local planning authority may issue an enforcement notice where it appears to them (a) that there has been a breach of planning control; and (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations".
4. Section 173(10) of the 1990 Act states that an enforcement notice shall specify such additional matters as may be prescribed in regulations. ENAR<sup>1</sup> Regulation 4 (a) and (b) states that "an enforcement notice issued under section 172 of the Planning Act shall specify (a) the reasons why the local planning authority consider it expedient to issue the notice; and (b) all policies and proposals in

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<sup>1</sup> The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

the development plan which are relevant to the decision to issue an enforcement notice”.

5. Whilst the reason for issuing the enforcement notice given by the Council in paragraph 4 of the notice refers to a policy from the Herefordshire Local Plan Core Strategy 2011-2031 (2015) and a policy from the Fownhope Neighbourhood Plan 2011-2031 (2016), it does not set out what those policies seek to achieve and does not allow anyone served with the notice to understand from the outset why it was considered expedient to issue the notice.
6. For these reasons, I consider that the enforcement notice has failed to meet the statutory requirements of section 173(10) and Regulation 4 (a) of the ENAR and is a nullity.

### **Other Matters**

7. Had I been going to consider this appeal I would be seeking correction in paragraph 6 of the notice ‘Time for compliance’. Section 173 (9) states that “an enforcement notice shall specify the period at the end of which any steps are required to have been taken”. The notice does not give a period, but rather a set date on which compliance is required. A date when the notice comes into effect is given as required by s173(8). Having regard to when the notice takes effect, the Council appear to be giving a period for compliance of ‘two months’.
8. Moreover, the notice does not set out the relevant period for immunity from enforcement action.

### **Conclusion**

9. I have concluded that the notice is a nullity and in these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended do not fall to be considered.

*Elizabeth Jones*

INSPECTOR



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## Costs Decision

Site visit made on 2 October 2018

**by Elizabeth Jones BSc (Hons) MTCP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 October 2018**

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### **Costs application in relation to Appeal A Ref: APP/W1850/C/18/3199001 and Appeal B Ref: APP/W1850/C/3199002**

#### **Land at 37 Scotch Firs, Fownhope, Hereford HR1 4NP**

- 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 Carwyn Thomas and Mrs Catherine Thomas for a full award of costs against Herefordshire Council.
  - The appeal was against an enforcement notice alleging the unauthorised operational development in the erection of fencing.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellants submit that the Council acted unreasonably because it failed to visit the site and assess the alleged breach of planning control correctly. However, in considering this appeal I have found that the notice is a nullity and no further action will be taken in connection with the appeals. I have not therefore, gone on to consider the merits of the cases advanced by each party in their entirety.
4. The Council has a responsibility to ensure that any enforcement notice that it issues is carefully drafted as it is a legal document which, if upheld, has serious consequences for the recipient. In this case the notice was technically defective to such an extent that it could not be corrected with the result that it had to be made a nullity. The failure to exercise due care in drafting the notice amounts to unreasonable behaviour on the part of the Council which has resulted in wasted expense for the appellants in having to pursue an appeal against a defective notice.
5. In conclusion, I consider that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

**Costs Order**

6. 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 Herefordshire Council shall pay to Mr Carwyn Thomas and Mrs Catherine Thomas, 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.
7. The applicants are now invited to submit to Herefordshire 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.

*Elizabeth Jones*

INSPECTOR