
Costs Decision

Site visit made on 12 December 2016

by Brian Cook BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 January 2017

**Costs application in relation to Notice A: Appeal Ref:
APP/L1765/C/16/3150534 and Notice B: Appeal Ref:
APP/L1765/C/16/3150535**

Land at Woodlea Nurseries, Wintershill, Durely SO32 2AH

- 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 Eric Newbury for a partial and a full award of costs against Winchester City Council.
 - The appeal was against an enforcement notice alleging the erection of a raised platform and sheds/garden building (Notice A) and change of use of the land from agriculture to a mixed use comprising agriculture and the siting of a residential caravan/mobile home (approximate position shown hatched blue on the plan attached to the notice) and for the storage of shipping containers and for non-agricultural business use(s) (Notice B).
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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 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 application for costs was made in writing by email dated 28 August 2016. The Council responded by letter dated 27 September 2016. I have no record of any further response by the applicant.
 4. In essence, the material part of the application sets out why Mr Newbury finds the Notices to be unclear and argues therefore that the *Miller-Mead* test has been failed. The gist of the Council's response to these points is a rebuttal of each and the simple statement that it therefore does not agree with the application put forward.
 5. As set out in my decisions, I have found that Notice A is a nullity and that Notice B is invalid and incapable of correction without injustice. In both cases I came to that conclusion because, in my judgement, the Council has failed to follow well-established case law, namely the *Miller-Mead* principles. In respect of Notice B these are the principles that underpin the advice previously contained in Circular 10/97 and now reinforced in the *East Sussex* judgement referred to in my appeal decision.
 6. Acting contrary to or not following well-established case law is given in the Planning Practice Guidance as an example of behaviour that may give rise to a
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substantive award of costs against a local planning authority. In accordance with that advice I consider that the Council has behaved unreasonably in issuing both notices in the form that it did.

7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified in respect of both appeals.

Costs Order

8. 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 Winchester City Council shall pay to Mr Eric Newbury, 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.
9. The applicant is now invited to submit to Winchester City 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.

Brian Cook

Inspector