
Costs Decision

Site visit made on 24 January 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 23 February 2017

Costs application in relation to Appeal A Ref: APP/C3105/C/16/3154976 and Appeal B Ref: APP/C3105/C/16/3154977

OS Parcel 4400 South of Manor Farm House and East of North Aston Hall Farm, Somerton Road, North Aston, Oxfordshire

- 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 Peter Durnin and Mrs Jane Durnin for a full award of costs against Cherwell District Council.
 - The appeal was against an enforcement notice alleging the material change of use of the land from agricultural use to residential use including the erection of a dwelling, veranda, porch, shed and an access track.
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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 serve the enforcement notice on all the interested parties and that the allegation contained in the notice was flawed. However, in considering this appeal I have found that although a major part of the allegation refers to a material change of use, the mobile home is not a dwelling as alleged. I have found the notice to be invalid and have quashed it. 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 quashed. 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.
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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 Cherwell District Council shall pay to Mr Peter Durnin and Mrs Jane Durnin, 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 Cherwell District 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