
Costs Decision

Site visit made on 21 March 2017

by Andrew R Hammond MSc MA CEng MRTPI

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

Decision date: 24 March 2017

**Costs application in relation to Appeal A Ref: APP/D0121/C/16/3158263
and Appeal B Ref: APP/D0121/C/16/3158264**

Land at Barrow Fields, Dial Lane. Felton BS40 9YD

- 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 North Somerset Council for a full award of costs against Mr G L Wedlake (Appeal A) and Miss B G Mitchell (Appeal B).
 - The appeal was against an enforcement notice alleging change of use from agriculture to mixed use of agriculture and parking of vehicles unconnected with agriculture.
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Procedural Matter

1. Appeal A was made by Mr Wedlake on grounds (a), (f) and (g) and Appeal B was made by Miss Mitchell on grounds (f) and (g).

Decision

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

Reasons

3. The Planning Practice Guidance (PPG) explains 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.

Paragraph: 030 Reference ID: 16-030-20140306

4. PPG further explains that an appellant is at risk of a substantive award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when:

- the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence
- the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the

Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period

•in enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant. Sometimes it is made plain by a recent appeal decision relating to the same, or a very similar development on the same, or substantially the same site, that development should not be allowed. The appellant is at risk of an award of costs, if they persist with an appeal against an enforcement notice on the ground that planning permission ought to be granted for the development in question.

Paragraph: 053 Reference ID: 16-053-20140306

5. The Council provided details of a number of appeals made by Mr Wedlake since 2004 to date for airport parking on land within the Green Belt, all were dismissed on the basis that the development was inappropriate development in the Green Belt and that no 'very special circumstances' had been demonstrated.
6. The appellants argue that it was not unreasonable to pursue the appeal as each application for planning permission is to be judged on its own individual merits and, that in exercising their right of appeal clearly laid out reasons why the development was considered to accord with all of the relevant policy advice.
7. However, it is abundantly clear that the appellants would have been aware of planning and enforcement appeal decisions by Inspectors relating very similar development on substantially similar sites in the Green Belt in which various arguments have been unsuccessfully advanced to try to overcome the hurdle that airport parking in the Green Belt is inappropriate development. Circumstances have not changed significantly, albeit that the costs guidance in PPG has replaced that in Circular 03/2009, and the appellants would have been aware that Appeal A on ground (a) had no reasonable prospect of success.
8. However, the appellants have also relied on legal grounds to pursue the appeals on grounds (f) & (g) and it was not unreasonable for them so to do.

Conclusion

9. The Council had to carry out work on Appeal A ground (a) despite it having no reasonable chance of success. Mr Wedlake's conduct in pursuing the appeal will have resulted in the Council incurring unnecessary or wasted expenditure. I therefore conclude that a partial award of costs should be made in respect of Appeal A.

Costs Order

10. 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 Mr G L Wedlake shall pay to North Somerset Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in Appeal A under ground (a); such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to Mr G L Wedlake, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Hammond

Inspector