
Costs Decision

Site visit made on 28 March 2017

by Simon N Hand MA

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

Decision date: 18 April 2017

Costs application in relation to Appeal Ref: APP/D0121/C/16/3158419 The Bungalow Inn, Kingdown Road, Bristol, BS40 5TP

- 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 Gregory Wedlake.
 - The appeal was against an enforcement notice alleging the change of use of the land and buildings from a public house and ancillary car park to a mixed use of a public house and ancillary car park and vehicle reception facility for airport customers including an office and car parking for vehicles not associated with the use of the public house, airport transfers for airport customers and the movement of customers vehicles to other sites.
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Decision

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

Reasons

2. The Council argue the appeal had no chance of success. They attached a large number of appeal decisions which made it clear that airport parking was inappropriate development in the green belt which had been consistently resisted on appeal. No material considerations had been put forward to indicate the substantial harm to the green belt could be outweighed so as to amount to very special circumstances to allow the appeal.
3. They also say the appellant claimed the motel use had been implemented which took time and trouble to disprove.
4. The appellant responds that each case must be considered on its own merits. The appellant is entitled to interpret policy differently from the Council and believes that his arguments are well founded. The motel use is clearly in the process of being implemented and it is wrong to suggest otherwise.
5. I do not consider whether the motel planning permission is being implemented or not is particularly relevant. I saw on my site visit the pub was still in operation, though part of it had been closed for renovation. Whether that was part of the motel permission or not I cannot say.
6. The Planning Practice Guidance makes it clear at paragraph 53 that an appellant is at risk of an award of costs being made against them if the appeal has 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.
7. In this case the appellant was professionally represented and so there is no reason for him not to know of the strong presumption against inappropriate development in the green belt, or the consistent approach taken by the Council and Planning Inspectors to airport car parking in the green belt as evidenced by the decision letters attached to the Council's statement, many of which involved the appellant himself.
 8. There have been no changes in circumstances that might lead to a different decision from those reached in other appeals. Indeed the appellant's argument boiled down to the fact the airport is very busy and people like to park nearby. This is hardly sufficient to outweigh long standing green belt and airport car parking policy at local and national level.
 9. The appellant also raised grounds (f) and (g). On ground (f) the argument that a lawful use was being interfered with was entirely spurious. The suggestion that 3 months was required was also not supported by any substantive evidence.
 10. In my view therefore the Council were put to the unnecessary costs of defending their enforcement notice when the appeal had no chance of success.
 11. 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 Gregory Wedlake shall pay to North Somerset Council, 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.
 12. The applicant is now invited to submit to Mr Gregory Wedlake, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

Inspector