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## Costs Decision

Inquiry opened on 26 February 2019

**by Paul Dignan MSc PhD**

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

**Decision date: 26 September 2019**

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### **Costs application in relation to Appeal Ref: APP/Y3940/C/18/3193744 Land at and adjacent to Appleford, Thornhill, Royal Wootton Bassett, Wiltshire, SN4 7RX.**

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mrs Susan Howe for a full or partial award of costs against Wiltshire Council.
  - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of the Land to a mixed use for residential, equestrian and the use of the Land for driver vehicle training.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. Parties to a planning appeal are normally expected to bear their own costs, but costs can be awarded where the unreasonable behaviour of a party has caused another party to incur unnecessary or wasted expense. The application and responses were made in writing. Briefly, the appellant alleges unreasonable behaviour by the Council in terms of how it has proceeded with the appeal, citing a number of the examples of types of unreasonable behaviour set out in the Planning Practice Guidance (PPG).
3. A substantial part of the application concerns the timing of the submission of the Council's noise, flood and highways evidence, which was submitted late on the Friday before the Inquiry opened, which meant that the appellant's experts felt they were unable to deal with the Council's evidence in time for the scheduled sitting days. I agree that the very late submission of evidence amounted to unreasonable behaviour, but because of the way the Inquiry unfolded I consider that it did not actually cause unnecessary or wasted expense. This is because the original scheduled sitting days were devoted solely to the ground (d) evidence. As a consequence there was ample time to consider the late evidence in the adjournment, the Inquiry not resuming until 16 July. Time spent in the adjournment reviewing or rebutting the Council's evidence would not be attributable to the timing of submission.
4. Video evidence relied upon by the Council was also argued to be late evidence. The evidence was not provided in any physical form, but internet links to the videos were provided in an appendix to one of the Council's witnesses. I was aware of them in advance of the Inquiry, but had not viewed them for cyber-security reasons, and the Planning Inspectorate guidance on the provision of

video evidence is that it will return any such evidence sent in advance of the Inquiry. However, working electronic links were provided within the evidence exchanged, along with a description of what was shown, which appears to me to be in accordance with the Planning Inspectorate's advice to Inquiry participants. Hence the evidence should not have come as a surprise to the appellants. The appellants were given the opportunity to view the videos before they were shown in public, and had the opportunity to recall the appellant to give her account of events. In my view the evidence was provided in a timely manner and in an acceptable and accessible form, so that there was no unreasonable behaviour involved.

5. It was also submitted that the Council failed to engage in a meaningful way with the preparation of Statements of Common Ground. In part this is said to have been due to the Council changing its position on the case between a refused LDC application for the use the subject of the enforcement notice and its position on ground (d). In summary, the officer's report for the LDC application suggests that a material change of use might have occurred through intensification, whereas the Council's case at the Inquiry was that changes in the business activity at the appeal site took the use from one incidental to the use of the dwellinghouse as such, to a separate primary use.
6. On this point I would first say that the Council was not obliged to take the same position in the enforcement appeal, the LDC refusal not having been appealed, but in any case the LDC report does state that "It is considered on the balance of probabilities that the combined evidence does demonstrate that a business ancillary to the residential use of the property has been conducted at the site during 2000-2010....", a position consistent with the Council's case at the Inquiry. But in any case, the Council's Statement of Case, on ground (d), sets out the case that it subsequently put. I do not accept therefore that there was unreasonable behaviour by the Council on the substance of the case, or indeed that there was a failure to properly engage with the appellant on this matter.
7. I have reviewed the substantial communications provided by the appellant and the Council, but I could not discern any clear failure to engage, rather the Council, as far as I could see, did its best to accommodate the appellants' requests. So far as the appellants' request to deal with some of the matters on the basis of written exchanges, ultimately that decision fell to me, and I considered the Council's position to be reasonable.
8. Overall, having considered all matters raised, I find that the conditions necessary for an award of costs, either full or partial, do not exist in this case.

*Paul Dignan*

INSPECTOR