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## Costs Decisions

Inquiry Held on 17-19 July 2019

Site visit made on 19 July 2019

**by A A Phillips BA(Hons) DipTP MTP MRTPI**

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

**Decision date: 27 September 2019**

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**Costs application A in relation to Appeal Ref: APP/P0119/C/18/3203477, APP/P0119/C/18/3203478, APP/P0119/C/18/3203480 and APP/P0119/C/18/3203481**

**Cherry Lodge, Bristol Road, Iron Acton**

- 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 South Gloucestershire Council for a full award of costs against Mr David Baber and Mrs Lisa Baber.
  - The inquiry was in connection with appeals against an enforcement notice alleging:
    - i. Change of use of the land edged red on the attached plan from agricultural use to ancillary residential use, including associated operational development; and
    - ii. Change of use from agricultural use to a sui generis mixed use for offices, general industrial use and commercial storage and distribution, including associated operational development.
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**Costs application B in relation to Appeal Ref: APP/P0119/C/18/3203477, APP/P0119/C/18/3203478, APP/P0119/C/18/3203480 and APP/P0119/C/18/3203481**

**Cherry Lodge, Bristol Road, Iron Acton**

- 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 Mr David Baber and Mrs Lisa Baber for a partial award of costs against South Gloucestershire Council.
  - The inquiry was in connection with appeals against an enforcement notice alleging:
    - iii. Change of use of the land edged red on the attached plan from agricultural use to ancillary residential use, including associated operational development; and
    - iv. Change of use from agricultural use to a sui generis mixed use for offices, general industrial use and commercial storage and distribution, including associated operational development.
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## Decisions

### *Costs Application A*

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

### *Costs Application B*

2. The application for an award of costs is dismissed.

### **The submission for South Gloucestershire Council**

3. The costs application was submitted in writing.

### **The response and submission by Mr David Baber and Mrs Lisa Baber**

4. The response and application for the award of costs against the Council were submitted in writing.

### **Reasons**

5. 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. The aim of the costs process is to encourage all those involved in the appeal process to behave in a reasonable way.
6. National Guidance indicates that an appellant is at risk of an award of costs being made against them if the appeal or grounds of appeal has no reasonable prospect of succeeding. Unreasonable behaviour can be either substantive, relating to the issues arising from the merits of a case or procedural, relating to process, in nature. In addition "unreasonable" is used in its ordinary meaning as established by the courts<sup>1</sup> and not in the stricter law definition of "Wednesbury" unreasonable.
7. Applicants for costs will also need to demonstrate clearly how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense in order for their application to succeed.

### *Costs Application A*

8. The Council contends that the appellants' case with respect of their ground (d) appeals and the manner in which a ground (b) appeal was made was misconceived in relation to the matter of the planning units. The Council therefore argues that an Inquiry would not have been needed for appeals on grounds (a), (f) and (g) and therefore the Council has had to incur unnecessary expense.
9. It is further contended by the Council that the appellants' appeal on ground (d) had no hope of success based on the factual position apparent from aerial photographs and other evidence. It seems to me that the nature of disagreement with respect to the immunity of the unauthorised development from enforcement action forms a fundamental disagreement between the main parties. In such circumstances it is reasonable for an Inquiry to take place to examine evidence and test the arguments of parties.
10. Although I have found in favour of the Council with respect to the matter of the planning units and dismissed the appeals on ground (d) I do not find that the appellants' cases were hopeless. The examine of the evidence submitted by both parties led me to the conclusion that the commercial uses are confined to the area identified in EN2 and likewise the residential uses are confine to the areas identified in EN1.

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<sup>1</sup> Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774

11. The appellants have advanced their argument based on the Burdle case<sup>2</sup> and in concluding against this matter detailed examination of the evidence presented was required at the Inquiry in order to come to reasoned conclusions. The disagreement between the main parties to the issues relating to the planning units and the appeals on ground (d) and (b) does not automatically mean that the appellants have acted in an unreasonable manner in pursuing their arguments. It would not have been possible to deal with the complex issues advanced through written procedures and the inquiry has allowed proper analysis, examination and understanding of the main issues.
12. I do not dispute the Council's argument that on many occasions appeals on grounds (a), (f) and (g) may be dealt with under written representations procedures. However, as a consequence of there being a particularly complex planning history of the site in terms of the various uses that have taken place over the years and the need to establish some key facts before determining the appeals it was certainly not unreasonable for the appellants to have requested an inquiry, irrespective of the appeals on ground (d) and hidden ground (b).
13. From a procedural point of view the Council contends that the appellants' ground (d) case as set out in Mr Hardwick's proof of evidence was not apparent from the appellants' statement of case and also that Mr Campbell's case as set out in is rebuttal evidence advanced ground (b) appeals. However, the evidence before me shows that the appellant met with the Council in July 2018 and set out and explained the evidence that was subsequently examined at the inquiry, including photographic evidence. As such, the Council will have seen much of the evidence in advance and cannot argue that it had not had an opportunity to see the evidence that would subsequently be presented at Inquiry.
14. In addition, although the Ground (b) case advanced by the appellant was a hidden ground, the case made under ground (b) is largely enveloped in the preliminary matters associated with the enforcement notices and the evidence presented under ground (d). I do not see that the appellants submitted new evidence since the exchange of proofs and therefore in that regard they have not behaved unreasonably.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a full award of costs is not justified.

#### *Costs application B*

16. It is advanced by the appellants that the Council has behaved unreasonably on the basis that they have incurred time and expense in considering and dealing with the comments issued by the Council on 10 July 2019 and 16 July 2019. I am aware that the comments submitted by the Council were not insubstantial, but in the context of the evidence submitted by the appellant the comments were useful and necessary in directing the discussion at the Inquiry regarding the enforcement notices, ground (d) appeal and also the hidden ground (b) appeal.

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<sup>2</sup> Burdle & Williams v SSE & New Forest

17. I understand why the Council did not include such matters in its proofs of evidence, but instead chose to respond to material issues that arose from the appellants' own evidence. I do not see that the Council acted unreasonably raising the issues which were subsequently dealt with in some detail at the Inquiry.
18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and that a partial award of costs is not justified.

*A A Phillips*

INSPECTOR