



## Costs Decision

Hearing Held on 14 January 2021

Site visit made on 15 January 2021

**by Simon Hand MA**

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

**Decision date: 1 February 2021**

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### **Costs application in relation to Appeal Ref: APP/W1850/C/20/3248036 Land at Shuttifield Coppice, Storridge, Malvern, WR13 5ES**

- 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 Tom Harnden for a full award of costs against Herefordshire Council.
  - The hearing was in connection with an appeal against an enforcement notice alleging the erection of an agricultural building.
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### **Decision**

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

#### **The submissions for Mr Harnden**

2. The appellant argues the Council were unreasonable when they turned away his application to regularise the development in the first place.

#### **The response by the Council**

3. The appellant's argument relates to a previous application not to the issue of the enforcement notice that is subject to this appeal. The appellant could have appealed the refusal of that application and applied for costs then but did not do so. There is no argument the service of the enforcement notice was unreasonable.

### **Reasons**

4. The background to this case is that an application to regularise the situation was made by the previous landowner and builder of the barn in 2019. This was refused by the Council and a subsequent appeal dismissed. The sole reason for dismissing the appeal was that there was no evidence the barn was necessary to promote the economic and social wellbeing of the AONB.
5. Following that decision the current appellant purchased the land and barn and made a new application. His understanding was that as he ran a locally based forestry management company that worked in the AONB, he had overcome the objection to the lack of evidence to pass the necessary test. The Council decided this application was substantially the same as the previous one and using their powers under s70A declined to determine it. They then issued the enforcement notice requiring the barn to be demolished which has led to this appeal.

6. I do not think the Council's argument that the appellant should have pursued an appeal against the decision to decline to determine the second application is tenable. There is no right of appeal against a decision by the Council to decline to determine an application using its powers under s70A. Consequently, this option was not open to the appellant.
7. In this case the relevant part of s70A is s70A(3). The Council can decline to determine an application where the Secretary of State has dismissed an appeal against the refusal of a similar application and there has been no significant change in the relevant considerations. In my view the decision to decline was wholly unreasonable. Not only was it a different appellant but he had clearly provided the evidence needed to answer the question as to whether the barn was necessary for the economic and social wellbeing of the AONB. It would have course been open to the Council, having considered the evidence, to disagree, and to decide that despite the appellant's evidence the barn was still not necessary, but that is not the same as there being no significant change in the relevant considerations. There clearly has, and to determine otherwise was unreasonable.
8. Because there is no right of appeal against a s70A determination, there can be no award of costs related to that issue alone. However, because of the Council's unreasonable actions the appellant was left with no alternative but to wait for the enforcement notice and then make an appeal. There was only a ground (a), so the appellant was only seeking the same determination as for the declined application.
9. A second issue is whether issuing the notice was unreasonable. If it was not, in other words if the Council had a plausible argument that the barn was harmful, then their unreasonable behaviour in declining to determine the second application would not have led to any unnecessary costs. As the enforcement notice would still have been issued and the appellant would still have had to go to appeal and argue his case. However, the Council had no credible argument against the barn or the use of the site. Instead they sought to re-open an issue concerning the impact on the AONB which had been decided by the previous Inspector and relied on a strained interpretation of policy CNDP5 to find the barn was not 'necessary'. The Council provided no evidence to support its assertions. A number of third parties did provide a detailed critique of the proposals, but their fears were either linked to the previous applicants use of the barn or the possible intensification of the use by this applicant, which would either require new planning permissions or could be controlled by conditions.
10. In other words no cogent reasons for refusing the ground (a) application, for issuing the notice or for declining to determine the original application were provided. Had the Council not acted unreasonably in declining to determine the application in the first place there would have been no need to issue the enforcement notice and no need for this appeal. Therefore the Council clearly acted unreasonably leading to the wasted costs of this appeal and a full award of costs is justified.

### **Costs Order**

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

Herefordshire Council shall pay to Tom Harnden, 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 the 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.

*Simon Hand*

Inspector