



Costs Decisions

Inquiry Held on 12 and 13 October 2021

Site visit made on 13 October 2021

by Andy Harwood CMS MSc MRTPI

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

Decision date: 9 December 2021

Costs application in relation to Appeal(A) Ref: APP/D0121/X/21/3267423 Devils Elbow Farm, Hillend, Locking, Weston-Super-Mare BS24 8PG

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr John Reed for a [partial] [full] award of costs against North Somerset Council.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for:
 - 1) The change of use of part of a building to form a self-contained dwellinghouse; and
 - 2) The change of use of two former residential caravans to dwellinghouses and associated operational development; and
 - 3) The change of use of land to use for open storage (Class B8).
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Costs application in relation to Appeal(B) Ref: APP/D0121/C/21/3268230 Devils Elbow Farm, Hillend, Locking, Weston-Super-Mare BS24 8PG

- 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 John Reed for a [partial] [full] award of costs against North Somerset Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the land from a mixed agricultural, equestrian use to a mixed agricultural, equestrian and the siting of a caravan for residential use.
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Costs application in relation to Appeal(C) Ref: APP/D0121/C/21/3268229 Devils Elbow Farm, Hillend, Locking, Weston-Super-Mare BS24 8PG

- 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 John Reed for a full award of costs against North Somerset Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change of use of part of a building to a single dwelling house.
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Costs application in relation to Appeal(D) Ref: APP/D0121/C/21/3268232 Devils Elbow Farm, Hillend, Locking, Weston-Super-Mare BS24 8PG

- 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 John Reed for a [partial] [full] award of costs against North Somerset Council.

- The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change in use of the land from a mixed agricultural and equestrian use to residential.
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Decision

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

Preliminary Matters

2. Costs applications were made prior to the inquiry in writing with respect to 3 cases although no application was explicitly made with respect to 'Appeal C'. It is difficult to separate out that case from the rest of the matters raised. I sought clarification about this following the inquiry and it was confirmed that the costs application does relate to 'Appeal C' as well. The Council was given an opportunity to comment upon this matter.

The submissions for Mr Reed

3. The appellant considered that they have provided precise and unambiguous evidence in relation to the LDC with the Council not providing evidence of their own to contradict it. In particular, the Council has failed to provide evidence of deliberate concealment, with their reasoning for refusing the application relying on supposition and assumption.
4. Additional information has been relied upon by the Council which could have been provided earlier during the processing of the LDC, enabling consideration by the appellant at that time. The Council also significantly changed their view from when they withdrew the previous enforcement notice (which resulted in a costs award) with respects to the Willerby unit and the "dwelling" within the large building. Since then they changed their position and should be relying on deliberate concealment only. The Council has changed its view of the 'Atlas' unit being a building and the Council erred by issuing a notice related to a change of use of land.
5. A split decision should have been issued for the LDC given they now accept 10 years occupation of the caravans. A time-bar of 4 years should have been applied for some elements of the what the LDC requested.
6. Furthermore, the enforcement notices have been poorly drafted. They should have withdrawn the notices and re-issued with respect to a change of use of the whole site and after the consideration of the appeal with respect to the LDC. The notice relating to the dwelling within the building brought back an argument that had been previously conceded by the Council.
7. Reference in the previous costs award that followed withdrawal of the previous notice was made. That decision to partially award costs referred to commonly incurred costs due to these subsequent appeals that had been lodged by the time the costs decision was made.
8. The Council has acted unreasonably and with clear disregard to the case law submitted to them through this and the previous process.

The response by North Somerset Council

9. The claim for costs has been based on a misunderstanding of the evidence which has been covered by the Council's closing submissions. This is not a matter for costs.
10. Regarding the suggestion that the 'Atlas' unit notice, the costs application says the Council has changed their view but all of the requirements for submitting statements and proofs of evidence have been complied with. There has been sufficient notice for the appellant to consider this and no late evidence.
11. The previous notice was withdrawn and a previous costs application relates to that.
12. With respect to the suggestion that a split-decision could have been issued with respect to the LDC, that is not a matter for costs and the Council doesn't have to agree with the appellant.
13. Regarding the suggestion that they should have withdrawn the notices and awaited the outcome of the LDC appeal, the Council should consider expediency straightaway in such circumstances. Often delay can lead to loss of control due to the time limits and waiting for an appeal decision on the LDC would assist a ground (d) appeal subsequently.
14. Case law has not been disregarded by the Council.

Reasons

15. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Costs may however 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 PPG confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and follow good practice; to encourage local planning authorities to properly exercise their development management responsibilities; and to discourage unnecessary appeals.
16. I disagree with the appellant with respects to the precision of the evidence that they presented, for reasons I set out in the LDC appeal decision. The Council in turn had presented evidence which questions the reliability of the appellant as his only witness and which had a significant influence on the outcome of the LDC appeal. In whatever way the evidence was interpreted in this case, the likelihood is that an appeal would have been likely.
17. Additional information not considered by the Council when they were dealing with the LDC was provided in time for the appellant to consider it prior to the inquiry. It has not been demonstrated that had the appellant seen the information earlier that it would have changed their view of the likely success of their case or the need for the inquiry.
18. The Council were entitled to review their position and were not bound by previous concessions when withdrawing the previous notice although I accept that to do so without good reason would demonstrate unreasonable behaviour. Furthermore, given my conclusions on the mixed use across the site, it seems

to me that the Council would have been better to continue to defend that previous notice. The consideration of the issues relating to the mixed use and planning unit are however judgements and can be complex.

19. The suggestion that the Council had to issue a split-decision for the LDC is not correct in my view. The Council's reasoning regarding the use of the whole site is flawed. The appellant's analysis of the same matters was also flawed. Neither party is better than the other in terms of how reasonable or unreasonable they have been in that respect. A split-decision could not have been issued as the uses cannot be decoupled in the way that both main parties have approached things. Even though there is provision within the Act to issue a split-decision it would not have been appropriate in this case.
20. I also agree with the Council regarding the general need to take enforcement action to prevent immunity under the provisions of s171B. In this case, they had already taken action and it is arguable that they could have waited for the LDC appeal to run its course and then utilise the 'second bite' provisions provided by s171B(4)(b). However, I consider that they were perfectly entitled to act cautiously in that respect and it was not in principle unreasonable to issue revised notices. It is in the public interest to bring such matters under control and to fail on a technicality would have been more of a risk. I also consider that doing so, once they had decided on the form of the notices, has been more efficient for all involved as it meant that the appeals could be conjoined and proceed at the same time.
21. The issuing of further notices was a reasonable thing to do but they were flawed and could not be corrected. The reasons for the change in form of notice appears to have been due to the way in which the Council changed their judgements about the arrangement of residential uses, both that within the large building and also the way in which one of the caravans had been adapted. I did not agree with those judgements and they are matters of fact and degree which are not clear-cut. However overall, looking at the 3 notices, the way in which the planning units were assessed was flawed. Those notices could not be corrected and there was no reasonable prospect of them being upheld on appeal.
22. There was a limited degree of unreasonable behaviour involved therefore. As the PPG makes clear, costs awards can only be made if a party has behaved unreasonably and that has directly caused another party to incur unnecessary or wasted expense in the appeal process. In terms of additional expense, the prepared evidence and submissions both in writing and at the inquiry would largely have been the same whether or not the enforcement notices were issued. The LDC refusal and resultant appeal covered the same matters as the enforcement appeals and the previous enforcement notice appeal.
23. There would have been some additional bureaucracy for the appellant in terms of the completing the appeal forms related to the enforcement notices, submitting the papers and preparing grounds of appeal. However, that would be the limit of the wasted expense resulting from the Council's limited unreasonable behaviour.

Conclusion

24. The Council has therefore acted unreasonably but only in relation to the form of

the enforcement notices. The unnecessary costs are limited to the paperwork that needed to be prepared and the time involved in the appellant's submission of the enforcement notice appeals only.

Costs Order

25. 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 North Somerset Council shall pay to Mr John Reed, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred and the time involved in preparing and submitting the appeals against the enforcement notices only; such costs to be assessed in the Senior Courts Costs Office if not agreed.
26. The applicant is now invited to submit to North Somerset 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.

A Harwood

INSPECTOR