



Costs Decisions

Inquiry Held on 9 November, 1, 2 and 8 December 2021

Site visit made on 9 November 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Costs application A) in relation to Appeal Ref: APP/D0121/X/20/3252913 The Old Forge, Bristol Road, Felton BS40 9UR

- 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 Gregory Wedlake for a 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:
 - a) The amalgamation of three former planning units into one from 2006 with the Forge accommodation, Lulscott, Siverridge and the uses formerly approved at the Old Forge area of the Site becoming one enterprise,
 - b) The building known as Lulscott is lawful and has a holiday accommodation use;
 - c) The use of the former Silveridge area of the Site for the placement of 2 static caravans used for holiday accommodation and the retention of the building to the rear of the former Silveridge area of the Site as holiday accommodation;
 - d) The use of the land across the Site for the parking of vehicles in association with the uses on the site, namely; holiday accommodation, office, car repair, garage and car hire.

Costs application B) in relation to Appeal Ref: APP/D0121/X/20/3252913 The Old Forge, Bristol Road, Felton BS40 9UR

- 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 North Somerset Council for a full award of costs against Mr Gregory Wedlake.
- The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for:
 - a) The amalgamation of three former planning units into one from 2006 with the Forge accommodation, Lulscott, Siverridge and the uses formerly approved at the Old Forge area of the Site becoming one enterprise,
 - b) The building known as Lulscott is lawful and has a holiday accommodation use;
 - c) The use of the former Silveridge area of the Site for the placement of 2 static caravans used for holiday accommodation and the retention of the building to the rear of the former Silveridge area of the Site as holiday accommodation;
 - d) The use of the land across the Site for the parking of vehicles in association with the uses on the site, namely; holiday accommodation, office, car repair, garage and car hire.

Decision A)

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

Decision B)

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

Reasons

3. 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.
4. Costs applications were made prior to the inquiry in writing and supplemented at the inquiry. I will not repeat the details of the applications. Both applications are for a full awards of costs. I have also kept the analysis to the matters that I consider are primarily important in deciding whether either of the main parties have acted unreasonably and then whether that behaviour has resulted in wasted expense.
5. I have agreed with the parties in my appeal decision that the use of the site appears to be a single mixed use which comprises a number of primary uses which cannot be looked at separately from one another. A material change of use occurred when the particular mix of primary uses began.
6. As the Council points out, the appellant has admitted that there has been a technical breach of one of the enforcement notices across the site with respect to the vehicle parking on the part of the site referred to as Lulscott. The appellant's suggestion that I could question the validity of the enforcement notice relating to that part of the site was not justified. I also consider that given the mixed use of the site, I could not issue a LDC on any reduced area and contravention of the requirements of the previous notice was potentially fatal to the issuing of a LDC. However due to the nature of the use of the site, the complexity of the planning history, the breach of that notice was perhaps a more nuanced matter, not a clear-cut fatal matter preventing the issuing of the LDC. Furthermore, I have determined that as a matter of fact and degree, a more significant element of the mixed-use due to parking of vehicles breaches the terms another enforcement notice, that relating to Silverridge. I had to make fact and degree judgements about these matters which are complex.
7. The appellant was clearly entitled to make an application to try and resolve what the lawful use of the site and other developments may be. The Council was also entitled to refuse that. Although there were some errors on the decision notice and within the officer's report, the basic outcome of refusing the certificate was well founded. Furthermore, the lack of precision with respect to what operational developments were considered by the appellant to be lawful justified refusal of that part of the submission as well, even if the Council didn't refer to it explicitly.
8. In essence therefore given the arguments of the appellants and the Council, an appeal was highly likely to occur. The scrutiny of the appeal process particularly when proceeding by way of a public inquiry should make both main

- parties ensure that their respective arguments are clearly put, well justified and that they co-operate with each other. It appears to me that aspects of how both parties operated before the appeal and during the inquiry was less than co-operative.
9. Before I opened the inquiry Mrs Sutherland on behalf of the appellant made several submissions about missing evidence to back up some of the claims of the Council. Those claims related to the suggestion that the appellant was running a satellite parking operation in a similar way as he had when enforcement action had been taken. When I opened the inquiry, I made it clear that if the Council continued with the claims about those parking sites, in the public interest it was necessary for me to consider them properly and I therefore needed the evidence. The appellant had attempted to get the information about those sites from the Council on a number of occasions. The Council following my questions about it had said that these were not a main element of their case. However, at that stage, I did not know how significant the matters raised could potentially be because I had not heard any of the oral evidence or legal submissions.
 10. I adjourned the inquiry but made full use of the remainder of that first day by carrying out the site visit. My conclusion with respect to this particular part of the process is that both parties could have dealt with it much better. The Council could have been more open about any evidence that they held. The appellant's representative was frustrated by various rounds of requests for the information but took very combative strategy in pursuit of it. The matter was a diversion that did not assist me in dealing with the case. Having thought long and hard about these matters, I cannot reach a view as to which party was more at fault.
 11. The adjournment did delay the completion of the inquiry and has further delayed the decision due to my other commitments including the intervening Christmas holidays. However, by going to the site on the first day, best use was made of that time. The inquiry would have taken a similar amount of time whether it was that week or a few weeks later. Even if the appellant is aggrieved with my conclusion that any unreasonable behaviour in these respects has been equal, I fail to see how it has resulted in wasted expense, merely a delay. It has not been demonstrated to me in relation to these or other matters raised, why additional costs have been incurred by the appellant.

Conclusion

12. There have been elements of unreasonable behaviour by the Council and also by the appellant. However, the decision to refuse the LDC was well founded, and the appeal was not entered into unreasonably. I am not persuaded that either party incurred wasted time or more expense as a result of any unreasonable behaviour by the opposing party. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated with respect to either application for costs.

A Harwood

INSPECTOR