
Costs Decisions

Inquiry Held on 7 June 2022

Site visit made on 8 June 2022

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Costs applications in relation to Appeal Refs: APP/P1009/C/20/3264071-72 and APP/P1009/W/20/3264070

Land at Field North and East of Crossing Cottage , East Of Railway Latteridge Road, Iron Acton, BS37 9TL

- The applications are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - **Application A** is made by Mrs C Mullane and Mrs M Doherty for a full award of costs against South Gloucestershire Council.
 - **Application B** is made by South Gloucestershire Council for a partial award of costs against Mrs C Mullane and Mrs M Doherty.
 - The inquiry was in connection with appeals against an enforcement notice alleging the change of use of the land from agricultural to a mixed use of residential caravan site (Gypsy/Traveller residential site) and equestrian, and against the refusal of planning permission for the creation of two traveller pitches & permission to relocate approved stable/tack room block.
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Decisions

Application A – for full costs against the Council

1. The application is dismissed.

Application B – for partial costs against the appellants

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

Application A - for full costs against the Council

3. 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.
4. The basis of this application is that, aside from the question of whether there was a lawful equestrian use of the site, the only real live issue in this case was flooding, and it is argued that extensive concessions made by the Council's flooding witness at the Inquiry, including an acceptance that the flood mitigation measures proposed were reasonable and capable of implementation by condition, means that that was a matter that could have been resolved by granting permission on the planning application subject to conditions, and not issuing the enforcement notice. but should have called for further negotiation as to appropriate conditions. In short, it was submitted that the

issue was always capable of resolution, it was unreasonable not to do so, and the appeals and Inquiry were unnecessary.

5. Ultimately however, while the approach to flood risk developed over the appeal period from the very rudimentary solution in the planning application Flood Risk Assessment to the detailed solution proposed at Inquiry, key questions about how the site would be developed were only answered at the Inquiry. It was agreed at the Inquiry that the existing site levels, those at the time the planning application was determined and at the time the enforcement notice was issued, resulting from the importation of very significant quantities of material of unknown origin, were unacceptable from a flood risk point of view and that planning permission could only be granted on the basis of the pre-development site levels. That was never made clear until opening, and it was never the case that it was obvious that the flood risk could be reduced to an acceptable level in the circumstances. The evidence at the Inquiry, not only from the flooding witnesses but also from the appellants, was necessary to enable me to come to a view, on balance, that the flood risk could be managed, and even then that required me to take all other considerations into account.
6. I do not therefore agree that the flood risk issue was always one that could be dealt with by condition. On the basis of the evidence available to the Council before the Inquiry, and in view of the extent of unauthorised development that had taken place when the planning application was under consideration, almost all of which now needs to be undone, I consider that the refusal of planning permission on the basis of flood risk and the issuing of the enforcement notice were not unreasonable. It follows that the conditions for an award of costs are not met.

Application B - for partial costs against the appellants

7. The Council seeks a partial award of costs on both procedural and substantive bases.
8. There are three procedural aspects raised. The first concerns the failure of the appellants to provide a satisfactory statement of case in good time. However, the appeal was much delayed by the pandemic, and the appellants provided a satisfactory statement of case and relevant reports on my request in reasonable time. There were also reasons for the delay, as the Council will have been aware from other proceedings. In the circumstances I am not persuaded that the delay in providing the necessary information led to unnecessary or wasted expense on the part of the Council, notwithstanding that they did raise complaints with the Planning Inspectorate at the time.
9. The second procedural matter raised was what the Council refers to as the introduction of new evidence in dribs and drabs, rather than the disclosure of all at the outset. In reality, the only evidence that would have been genuinely new was that provided on heritage matters, and which led the Council to review its case and withdraw its heritage objection. As far as I can see, that would have led to costs saving rather than waste.
10. The third procedural matter is also substantive. It is that the appeals made on grounds (b), (c), (d) and (e) did not have sufficient merit and should not have been pursued. Part of the original basis of ground (b) did form part of the appellants case at the Inquiry, and there was some, albeit marginal at best,

purpose served. Ground (c) was withdrawn, and a different, though entirely hopeless, ground (d) raised at the Inquiry. So far as ground (e) was concerned, it was made on the basis that the Council had failed to serve all those known to be in occupation or properly made inquiries in that respect, so that substantial prejudice had occurred. But nobody who might have been prejudiced in that way was ever identified. Although the Council did find 2 entities that had not been served but who might have had an interest, though it remains unlikely that they would have been materially affected by the notice, the reason for making the appeal on this ground was never substantiated, or even attempted.

11. It is clear that the enforcement notice appeals on grounds (c), (d) and (e) were without substance, should never have been made, and having been made should have been withdrawn long before the Inquiry opened. Had the appellants' case on these grounds been objectively reviewed, that much would have been obvious. Failure to do so meant that the Council had to deal with them, as is clear from their planning witnesses' Proof of Evidence. The time spent preparing for and rebutting those grounds was wasted expense that resulted from unreasonable behaviour by the appellants. The costs regime expects that expense wasted in such circumstances should be re-imbursed, and I shall make a costs order in those terms.
12. For clarity however, I will make it clear that these grounds of appeal were not the reason that an Inquiry was necessary. As I made clear in communication with the Council, the nature of the development and the issues arising indicated that a Public Inquiry would be the most appropriate procedure. It was not the need for evidence under oath in relation to grounds (c) and (d).

Costs Order

13. 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 Mrs C Mullane and Mrs M Doherty shall pay to South Gloucestershire Council, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in responding to the enforcement notice appeals made on grounds (c), (d) and (e); such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Mrs C Mullane and Mrs M Doherty, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Dignan

INSPECTOR