
Costs Decisions

Inquiry Held on 29 & 30 November 2022

Site visit made on 30 November 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2022

Costs application A in relation to Appeal Ref: APP/P1615/C/22/3291233 Callow Cottage, Ruddle, Newnham, Gloucestershire, GL14 1DS "The Land" shown edged red on the plan attached to the Notice "The Plan"

- 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 Darren Larkham for a full award of costs against Forest of Dean District 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 for the siting of an unauthorised static caravan with associated decking framework for residential purposes and the storage of static caravans"*.
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Costs application B in relation to Appeal Ref: APP/P1615/C/22/3291236 Callow Cottage, Ruddle, Newnham, Gloucestershire, GL14 1DS "The Land" shown edged red on the plan attached to the Notice "The Plan"

- 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 Pitman Blackstock White Solicitors Executors of Mr F Larkin for a partial award of costs against Forest of Dean District 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 for the siting of an unauthorised static caravan with associated decking framework for residential purposes and the storage of static caravans"*.
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Decisions

Costs Application A - APP/P1615/C/22/3291233

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

Costs Application B - APP/P1615/C/22/3291236

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

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

Costs Application A - the submissions for Mr Darren Larkham

3. The application for costs is on the basis that the Council has acted unreasonably causing unnecessary expense in the appeal process in so far that:
- i) They did not carry out adequate pre-enforcement notice investigations and that any such investigations were not independently assessed by the local planning authority prior to the issue of the notice;
 - ii) That the inquiry was delayed for half a day on the basis that the Council were not sure of their 'legal' position in respect of various caravans on the site;
 - iii) That the appellant has discharged the burden of the balance of probability in respect of the ground (d) appeal;
 - iv) That the local planning authority have never discussed Mr Darren Larkham's employment activities near the River Severn or attempted to assist him in his 'need';
 - v) That a resolution could have been found at either Callow or Bullow by imposing planning conditions; and
 - vi) Costs have been incurred as a result of the consideration of requirement 5(7) to *'cease the use of the land as an unauthorised dock yard within the redline marked on the site location plan'* which did not relate to the allegation and whereby the Council confirmed by email on 11 October 2022 *'the Council and the appellants of appeal 3291236 consider that the enforcement notice should be amended, and step 7 removed. The views of the appellant for the connected appeal 3291233 have also been sought in this matter; however, the Council has not yet received a response'*.

Costs Application A - The response by Forest of Dean District Council

4. In response to the costs application, the Council commented as follows at the Inquiry:
- i) The Council did carry out proper enforcement investigations including site visits, the consideration of aerial photography and other evidence and undertook land registry searches. Proper and thorough investigations were carried out by Mr Colegate, overseen by the Development Control Manager, and a report was prepared and considered by Planning Committee;
 - ii) The consideration of preliminary matters, including the consideration of the allegation and the requirements of the notice, was a matter that the Inspector specifically included in his agenda, was a matter led by him and, furthermore, he also gave prior notice to all main parties that he was going to do this. There was therefore no delay caused by the Council in this regard. There is a lack of clarity from appellant A in terms of what is meant by not knowing the 'legal position' in respect of various caravans on the site.

- iii) Agreement to correct the allegation in the notice was not directly related to caravan 'C' which has been the focus of the grounds of appeal for Appellant A;
- iv) The onus is on the appellant to make his ground (d) appeal and the balance of probability is not a costs application point;
- v) Perceived need or business issues are not a costs application point;
- vi) The ground (a) appeal lodged by appellant A has considered whether planning permission should be granted for caravan 'C' with associated decking framework at Callow Cottage; this is not a costs point. There is no requirement for the Council to find accommodation at Bullow Pill in terms of enforcement investigations or in terms of the consideration of the subject enforcement appeal; and
- vii) The Council's confirmation on 11 October 2022 in respect of its agreement to delete requirement 5(7) of the notice did not result in appellant A wasting time and expense in the appeal process.

Costs Application A Conclusion

5. I concur with the Council's responses at i) to vi) above. In these respects, no unreasonable behaviour resulting in wasted time and expense in the appeal process as outlined in the PPG has occurred. In respect of the Council's case as it relates to caravan 'C' (the focus of the Appellant A appeal), I am satisfied that it has reasonably substantiated its position in terms of the reasons for issuing the notice and in terms of its consideration of the grounds of appeal, including the ground (a) appeal in respect of such a caravan.
6. In respect of vii) above, I have considered whether Appellant A did undertake work in respect of this matter prior to 11 October 2022. There is at least some evidence in the Appellant A statement of case prepared by John Kendrick Ltd on page 4, paragraph 6.5, that this matter was considered. While the evidence is that the time and expense undertaken by Appellant A in respect of this matter was not likely very significant, if unreasonable behaviour leads to any wasted time and expense, then a partial award of costs is justified. It is not, for example, the case that one can simply form the view that costs are insignificant and therefore that an award of costs is not justified.
7. I therefore conclude that in respect of requirement 5(7) in the notice, unreasonable behaviour has resulted in wasted time and expense in the appeal process up to 11 October 2022. In this regard, I conclude that a partial award of costs is justified.

Costs Application B – the submission for Pitman Blackstock White Solicitors acting on behalf of the Executors

8. The application for costs is made solely on the basis that the Council included a requirement in the notice to *'cease the use of the land as an unauthorised dock yard within the redline marked on the site location plan'* and then confirmed by email on 11 October 2022 that *'the Council and the appellants of appeal 3291236 consider that the enforcement notice should be amended, and step 7 removed. The views of the appellant for the connected appeal 3291233 have also been sought in this matter; however, the Council has not yet received a*

response'. The Executors claim that this amounts to unreasonable behaviour and that it has led to unnecessary expense in the appeal process.

Costs Application B - The response by Forest of Dean District Council

9. In response to costs application B, the Council indicated at the Inquiry that it did not wish to *'resist the costs application'*.

Costs Application B Conclusion

10. The Council accepts that it displayed unreasonable behaviour. I do not disagree. This unreasonable behaviour has resulted in wasted time and expense in the appeal process up to 11 October 2022. In this regard, I conclude that a partial award of costs is justified.

Costs Application A – 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 Forest of Dean District Council shall pay to Darren Larkham the partial costs of the appeal proceedings described in the heading of this decision and limited to matters relating to requirement 5(7) in the notice (i.e. *'cease the use of the land as an unauthorised dock yard within the redline marked on the site location plan'*) up to 11 October 2022; such costs to be assessed in the Senior Courts Costs Centre if not agreed.
12. The applicant is now invited to submit to Forest of Dean District 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.

Costs Application B – 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 Forest of Dean District Council shall pay to Pitman Blackstock White Solicitors Executors of Mr F Larkin the partial costs of the appeal proceedings described in the heading of this decision and limited to matters relating to requirement 5(7) in the notice (i.e. *'cease the use of the land as an unauthorised dock yard within the redline marked on the site location plan'*) up to 11 October 2022; such costs to be assessed in the Senior Courts Costs Centre if not agreed.
14. The applicant is now invited to submit to Forest of Dean District 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.

D Hartley

INSPECTOR