
Costs Decisions

Inquiry held on 14-16 September 2021 and 18 October 2022

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 27 January 2023

Costs applications in relation to Appeal Ref: APP/L3815/C/19/3203215 Old Army Camp, Cemetery Lane, Westbourne, West Sussex PO10 8RR

- 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 applications are made by Mr J Sullivan for a partial or full award of costs against Chichester District Council and for a partial award of costs against Westbourne Parish Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the change of use of the land to use for the storage of portable site office cabins, container cabins, portable toilet blocks and commercial vehicles.
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Costs applications in relation to Appeal Ref: APP/L3815/C/19/3203219 Old Army Camp, Cemetery Lane, Westbourne, West Sussex PO10 8RR

- 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 applications are made by Mr J Sullivan for a partial or full award of costs against Chichester District Council and for a partial award of costs against Westbourne Parish Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the change of use of the land to use as a civil contractor's yard.
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Costs applications in relation to Appeal Ref: APP/L3815/C/19/3203222 Old Army Camp, Cemetery Lane, Westbourne, West Sussex PO10 8RR

- 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 applications are made by Mr J Sullivan for a partial or full award of costs against Chichester District Council and for a partial award of costs against Westbourne Parish Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the change of use of the land to use for the storage of metal skips, building materials, scaffolding equipment, lifting platforms, storage racks, engine parts, commercial vehicles, HGVs, redundant vehicles, truck bodies and use of the building shown hatched green on the attached plan for vehicle repair and servicing.
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Decisions

Costs applications in relation to Appeal Ref: APP/L3815/C/19/3203215

1. The applications for a full award of costs against Chichester District Council and for a partial award of costs against Westbourne Parish Council are refused.

2. The application for a partial award of costs against Chichester District Council is allowed in the terms set out below.

Costs applications in relation to Appeal Ref: APP/L3815/C/19/3203219

3. The applications for a full award of costs against Chichester District Council and for a partial award of costs against Westbourne Parish Council are refused.

4. The application for a partial award of costs against Chichester District Council is allowed in the terms set out below.

Costs applications in relation to Appeal Ref: APP/L3815/C/19/3203222

5. The applications for a partial or full award of costs against Chichester District Council, and for a partial award of costs against Westbourne Parish Council, are refused.

The submissions for Mr J Sullivan

6. The submissions by Mr Sullivan and his final comments on the responses made by the District and Parish Councils were made in writing.

The response by Chichester District Council

7. The response by Chichester District Council was made in writing.

The response by Westbourne Parish Council

8. The response by Westbourne Parish Council was made in writing.

Reasons

9. The Planning Practice Guidance advises that costs may 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 applications for full awards of costs against Chichester District Council

10. The applications are predicated on the basis, in each of the three appeals, of the enforcement notice being quashed and planning permission being granted. In none of the three appeals was the enforcement notice quashed and planning permission granted. There is therefore no justification, in any of the three cases, for a full award of costs.

The applications for partial awards of costs against Chichester District Council

11. In Appeal A and in Appeal B (Enforcement Notices (EN) WE/41 and WE/40 respectively) a part of the access road into the Old Army Camp was included in the land to which the notice related. The access road is ancillary to all the commercial uses of land and is not in itself in commercial use; it is simply an access road. In both cases it was unreasonable of the Council to resist the Appellant's suggestion, made before the Inquiry, to amend the plans attached to the notices to exclude the access road. This matter necessitated, in both cases, the making of a ground (b) appeal and in pursuing that appeal in written evidence and at the Inquiry. The Appellant has incurred wasted expense in pursuing the ground (b) appeals and, in this regard, a partial award of costs is justified.

12. A ground (e) appeal was only made in Appeal A. The Appellant and the tenant of the land were served with EN WE/41. Three tenants of other parts of the

Old Army Camp were not served with EN WE/41 but had an interest in the outcome of Appeal A because if the notice was upheld, they would lose access to their premises. Two of those tenants made written and verbal representations to the Inquiry and were not therefore prejudiced. It is inconceivable that the third tenant did not know about EN WE/41 and the consequences of it being upheld, and it must have been a matter of choice that he did not make any representation. No party has incurred substantial prejudice and had the Appellant reached this somewhat obvious conclusion he would not have pursued the ground (e) appeal. A partial award of costs is not justified in relation to the ground (e) appeal.

13. With regard to Appeal C, the Appellant responded to a Planning Contravention Notice (PCN) issued in June 2017 and before the Council made a site visit at the end of the year. After that site visit, the land was subdivided to create three planning units rather than two but the Appellant failed to update the Council on this change. The Council cannot be expected to make multiple site visits to check on the use of land and it was not unreasonable for them to rely on the response to the PCN when draughting the EN. The Appellant has not incurred unnecessary expense in making a ground (b) appeal, which was successful and which resulted in the necessary variations to the EN to reflect the use of the land on the date of issue of the notice. A partial award of costs is not justified in relation to the ground (b) appeal in Appeal C.

14. The Council's ground (a) case for Appeal C in relation to the building hatched green on the EN plan was not just predicated on the basis that there was no fall-back position for the use of the building. This matter was specific to the building and all the other matters mentioned by the Council in relation to the use of open areas of land at the Old Army Camp also applied to the use of the building. The Council has substantiated its case, both in writing and at the Inquiry, for issue of EN WE/42 and did not act unreasonably in issuing the enforcement notice.

15. The Appellant's applications for partial awards of costs against Chichester District Council succeed only in relation to the making of ground (b) appeals in Appeals A and B.

The applications for partial awards of costs against Westbourne Parish Council

16. The applications are made against the Parish Council because they maintained a highway safety objection to the grant of planning permission pursuant to the ground (a) appeals, despite the fact that the Highway Authority had no objection and despite the District Council withdrawing their objection on highway safety grounds. The District Council's objection was only with regard to the geometry of the junction of Cemetery Lane with Foxbury Lane and they withdrew their objection on this basis after they had received Mr Hurlstone's written evidence. In this regard the Appellant is only seeking costs against the Parish Council in relation to the other highway safety matters referred to by them.

17. The Parish Council represent the population of Westbourne, many of whom will regularly travel, including by bicycle and on foot, along Cemetery Lane to and from the cemetery and beyond for leisure purposes. They will have first hand knowledge gained over many years of traffic associated with the Old Army Camp and other developments accessed along Cemetery Lane such as Woodmancote Contractors Limited. They will have seen lorries turning into and out of Cemetery Lane and, for instance, reversing into Lark Way to approach that junction from the south. Photographs of these events are provided in the Parish Council's evidence. Evidence does indicate that articulated lorries may be able to turn into Cemetery

Lane in one manoeuvre from the north but only by crossing into the opposite carriageway. This will have been witnessed by local residents and it is a matter of subjective judgement whether this causes concern for highway safety.

18. A rigid chassis HGV, with a wider turning circle than an articulated lorry, and not all drivers of such vehicles follow swept path diagrams, will have, on occasions, been unable to turn into Cemetery Lane in one manoeuvre. Photographic evidence of damage to verges around the junction clearly indicate that these manoeuvres are difficult to achieve and could possibly lead to conflict with other road users and with pedestrians. Such events will have been observed over the years by local residents and, just on this basis, it was not unreasonable for the Parish Council to maintain an objection on highway safety grounds. There is no statistical data on traffic generated by any developments accessed along Cemetery Lane, whether individually or collectively. It was not unreasonable for the Parish Council to seek to obtain such data by installing cameras and it is a matter of common sense that traffic generated by the use of land, such as that at Old Army Camp, where no use of the land previously existed, will have increased traffic flows along Cemetery Lane alongside the cemetery and up to the junction with Foxbury Lane.

19. Local residents may well have observed occasions of conflict between vehicles and other road users on Cemetery Lane and may well have observed traffic, including large vehicles, travelling too fast along the lane. All of these events will have contributed to local feeling against developments at the Old Army Camp and it was not unreasonable for the Parish Council to respond to local feeling by maintaining their highway safety objection. Mr Russell, for the Parish Council, did rely on the somewhat outdated DRMB trunk road guidance rather than that provided by the two Manual for Streets Documents. But he did also refer to the latter documents and there is nothing of substance in the Appellants claim that reference to DRMB guidance has resulted in any substantive wasted expense.

20. All matters mentioned in support of the application for costs have been taken into account but they do not, even collectively, justify a conclusion that a partial award of costs against the District Council, in relation to any of the three appeals, is justified.

Costs Order

21. 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 Chichester District Council shall pay to Mr J Sullivan, the costs of the appeal proceedings described in the headings of this decision limited to those costs incurred in making ground (b) appeals in Appeals A and B; such costs to be assessed in the Senior Courts Costs Office if not agreed.

22. The applicant is now invited to submit to Chichester 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.

John Braithwaite

Inspector