



Costs Decision

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

an Inspector appointed by the Secretary of State

Decision date: 07 February 2023

**Costs application in relation to Appeal Ref: APP/J1535/C/21/3287180
Land at Gladwyns Farm, Hamlet Hill, Roydon, Harlow CM19 5JY**

- 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 Epping Forest District Council for a full award of costs against Mr Antony Ashall.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without Planning Permission: A change of use of the land to storage & distribution of Non-Agricultural equipment and materials (a B8 Storage & Distribution) Use.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. The PPG gives specific guidance as to what type of behaviour may give rise to a substantive award against an appellant¹. It says:

"The right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when:

...in enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant."

4. The appellant exercised a legal ground of appeal against the enforcement notice on the basis that he sought to argue that the land had acquired immunity from enforcement action due to continuous B8 use for more than 10 years (the case as stated was B8 use from 2007 to date). The burden of proof fell upon him. Yet one of his exhibits was a letter he sent to the Council on 27 August 2014 which cannot be construed in any reasonable way other than he was stating that the storage at that time was associated with his domestic property. As this clearly would not be storage constituting a primary B8 use, and therefore was fatal to an argument asserting more than 10 years continuity of such use, the letter is evidence that made it impossible for the appeal to have any reasonable prospect of succeeding.
5. The hopelessness of an appeal on the argued basis should further have been evident to the appellant due to the previous refused applications for Certificates

¹ Paragraph: 053 Reference ID: 16-053-20140306

of Lawful Existing Use or Development² which had essentially dealt with the same matter.

6. However, the appellant proceeded with an appeal that – for the above reasons – should not, in all reasonableness, have been made. The Council has been put to the unnecessary costs of defending it.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

8. 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 Mr Antony Ashall shall pay to Epping Forest District Council, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Mr Antony Ashall, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR

² EPF/2306/20; EPF/0478/21; EPF/1955/21