



Costs Decisions

Hearing Held on 27 April 2023 with site visit made the same day

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

an Inspector appointed by the Secretary of State

Decision date: 9 June 2023

Costs applications in relation to:

**Appeal Refs APP/Y0435/C/22/3297869 and APP/Y0435/C/22/3298181
Hollington Wood, Newport Road, Emberton, Olney MK46 5JH ('the Land')
shown edged red on the plan attached to the notice ('the Plan')**

- The applications are made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- Application A is made by Mr Philip Solt for a full award of costs against Milton Keynes Council. Applications B and C are made by Milton Keynes Council for a full award of costs against Mr Philip Solt and Mr Carlos Williams (Special Ops HQ) respectively.
- The hearing was in connection with an appeal against an enforcement notice alleging without planning permission, the unauthorised change of use of part of the land and operational development (brief summary).

Decisions

1. Application A for an award of costs is allowed in the terms set out below.
2. Applications B and C for awards of costs are refused.

Reasons

3. 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.
4. The enforcement notice has been found to be a nullity. On 21 November 2022, after the appeal had been started under the written representations procedure, the Inspectorate wrote to the parties inviting comments on serious defects I had identified within the notice. The Council was requested to consider the points made and consider withdrawing the notice to avoid unnecessary expense by the parties during the ongoing appeal. The 'second bite' provisions contained within Section 171B(4) of the Town and Country Planning Act 1990 as amended were highlighted.
5. On 30 November 2022, the Council replied. It did not acknowledge any defects and declined to withdraw the notice. While the Council was entitled to take that position if otherwise reasonable in its actions, it failed to directly and sufficiently address the key points made: (i) that, in the section communicating the matters alleged to constitute a breach of planning control, the notice did not state the new use which was alleged to have resulted in the material change of use of Hollington Wood; and (ii) that the reasons for issuing the notice did not explain how/if there was harm from the breach of planning control in conflict with development plan policies. The omission to sufficiently address those issues during the appeal process when raised was unreasonable behaviour, particularly as they were key to my finding on nullity.

6. Following the Council's response, including a subsequent email of a similar nature on 13 December 2022, the Inspectorate changed the appeal procedure to a Hearing upon my recommendation as I considered that I needed to ask oral questions of the parties that had been insufficiently answered in writing.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance (PPG), has been demonstrated in respect of Application A and that a partial award of costs is justified to cover the applicant's expenses commencing with the start of the Hearing procedure on 17 January 2023. I do not find that a full award is justified as the substantive costs arguments made in that respect essentially relate to expediency issues surrounding the Council's decision to issue the notice. Whether or not it is expedient or proportionate for a local planning authority to decide to issue a notice is not a matter for me, and does not amount to unreasonable behaviour for the purposes of the PPG.
8. As regards Applications B and C made by the Council, the case in essence is that the respondent appellants did not engage with the appeal process and that they caused the issue of the notice (and therefore the appeal process) due to the alleged breach of planning control. However, I cannot see any substantive evidence that the appellants failed to engage with the appeal process¹. The appellants made appeal submissions and participated fully at the Hearing. Further, the fact that there has been an alleged breach of planning control – which is necessarily always the case in an enforcement notice appeal – does not mean in itself that there are grounds for a costs award in the circumstances described in the PPG. I cannot see that there is any substantive evidence of unreasonable behaviour which would justify such an award.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated as regards Applications B and C.

Costs Order

10. 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 Milton Keynes Council shall pay to Mr Philip Solt, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred from the start of the Hearing procedure on 17 January 2023; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. Mr Solt is now invited to submit to Milton Keynes 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.

Andrew Walker

INSPECTOR

¹ Indeed, the Council's comments in its application concerning the appellants attempts to "negotiate" suggests that they have not failed to engage in general terms both inside and outside the formal appeal process