



Costs Decision

Hearing held on 4 July 2023

Site visit made on 4 July 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

**Costs application in relation to Appeal A Ref: APP/N0410/C/23/3315512;
Appeal B – 3302585 and Appeal C - 3318262
St James Farm, Bangors Road South, Iver, Buckinghamshire, SL0 0AX**

Decision

1. The application for an award of costs is refused.

The Costs' Application

2. Parties in planning appeals normally meet their own expenses. However, 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.

The Appellant's case

3. The appellant argues that in the case of Appeal B, the material change of use of building C to B8, the Council had no reason to refuse planning permission. Officers recommended acceptance as the highway objection had been withdrawn. Even had it not been, the only issue was the pinch point to the south of the site and there was no evidence of a problem caused by the use of building C.
4. The same argument goes for Appeal C, there was simply no evidence of any highways problems likely to be caused by the granting of prior approval for the change of use of this building either.
5. For Appeal A, the enforcement appeal, the notice was excessive. As argued above, the correct approach would have been to grant planning permission for building C and then remove it from the notice. There was then no real objection to the use of buildings D and E, only to outside storage in areas A and B and it is against those areas the notice should have been directed. The highways evidence was flimsy and concocted after the notice was issued. It was wrong to argue the buildings could not be used without outside storage and the requirement to cease all commercial use was excessive. The discussion on conditions held at the Hearing should have happened before and would have resolved any outstanding problems.

The Council's case

6. The Council respond that on Appeal B, although the application only referred to building C, members were concerned as to the cumulative impact of the highways issue, and, despite requests, no overall highways information was

forthcoming from the appellant until after the appeal had been lodged. On the enforcement appeal the Council had well founded concerns over storage and highways which were communicated to the appellant who did not submit an application to regularise the situation and enable these matters to be discussed. No use was made of the Council's pre-application service. The appellant did respond to the PCNs issued but this did not allay the Council's concerns. Given the breach identified, cessation of the non-conforming uses was the only solution.

7. On Appeal C, the prior approval application noted vehicles were parked and manoeuvred in the yard which prompted a query from the Council as to the overall use of the site, but the appellant was keen each item was dealt with in isolation.

Reasons

8. I have some sympathy with the appellant as it was obvious before I opened the Hearing that there was not a great deal between the parties in this case. However, they have been their own worst enemy as they have insisted throughout the appeal and into this costs' claim that each application should have been dealt with individually and on its own merits. I agree that had they done this, the Council could have granted planning permission for the material change of use of building C subject to conditions and prior approval for the agricultural building. Leaving the enforcement notice to deal with buildings D and E.
9. However, it was not inherently unreasonable for the Council to want to consider the use of the site as a whole and they clearly felt the appellant was minimising possible impacts by splitting up the site into 3 areas (building C, the prior approval building and the rest). It is important to remember the Council was faced with a farm yard that had clearly been mostly converted into a light industrial estate without any attempt to gain planning permission. When they visited the site there was a mass of outside storage associated with the window manufacturer in building D, numerous trucks parked by the vehicles repairs in building E, parking associated with building C and a scaffolding use taking up the whole of area A. Plus the ongoing agricultural uses. All of this in the green belt and with access onto a road with a potentially dangerous pinch point to the south of the site.
10. It was not therefore, as a matter of principle, unreasonable to seek information on the cumulative highways impact of the prior approval building or building C as neither were operating in isolation. It obviously suited the appellant to take the opposite view but that does not make the Council's stance unreasonable. The outside storage was clearly harming the openness of the green belt and so any development that encouraged such uses would be inappropriate development in the green belt. It was therefore reasonable to issue a notice requiring all the unlawful, and harmful, uses to cease. Without the information on cumulative highways impacts it was also not unreasonable to refuse the prior approval application.
11. I also agree with the Council that unrestricted B8 uses are highly likely to generate demand for outside storage, thus harming openness, as they saw was happening already on site. The obvious answer to this was not for the Council to hunt about for a way of dealing with different applications and unlawful uses to try and end up with an acceptable solution, but for the appellant to accept

he needed to make an application to regularise the use of the site as a whole, which would have allowed for these issues to be aired in full and for conditions to be discussed. He was, however, resistant to doing that, although it was essentially what the Hearing ended up doing.

12. In my view therefore the Council's approach to the appeals was not unreasonable. The second issue is whether, at the end of the day, there was a genuine issue with the green belt or highways. Clearly there was with the green belt, and a notice directed solely at storage uses in areas A and B would not have resolved the potential for storage uses on the rest of the site.
13. Highways is a more complex matter. The appellant did provide evidence showing the actual use of HGVs at the site was only three two-way trips a day, but that assumes those uses would remain, and already by the time of the Hearing the window manufacturer was on their way out. The Council preferred the theoretical TRICS database figures. I discuss this in full in the decision and it is clear that although I found in favour of the appellant, this was not as clear cut and obvious as the appellant argues. It follows that the Council did have grounds for concern over HGV use of the site when looked at as a whole.

Conclusion

14. Taking all the above into account I do not consider the Council acted unreasonably so as to force the appellant into the unnecessary expense of an appeal. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Simon Hand

INSPECTOR