

Costs & Decisions Team

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Jason Lewis
Warrington Borough Council
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Your Ref: ENF/22/09269

Our Ref: APP/M0655/C/22/3304448

Date: 23 November 2023

BY EMAIL ONLY

Dear Mr Lewis

Local Government Act 1972 - Section 250(5)

Town and Country Planning Act 1990

Appeal by Land and Securities Limited

Site Address: Land at 107 Sankey Street, Bewsey and Whitecross, Warrington

YOUR APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities to decide your application for an award of costs, made on 20 October 2023, against Land and Securities Limited (the appellant). The appeal, dated 3 August 2022, was against an enforcement notice (EN) issued by Warrington Borough Council (the Council) on 27 June 2022. The breach of planning control stated in the EN is the material change in the use of the land for the parking of vehicles with associated laying of asphalt hardstanding, fencing and gates, hooped perimeter barriers, pay and display machines and signage.

DECISION

2. The application is refused.

Policy background

3. Planning Practice Guidance (PPG) makes clear that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. PPG goes on to say that appellants are required to behave reasonably in relation to procedural matters on the appeal, for example by complying with the requirements and deadlines of the appeals process. Examples of unreasonable behaviour which may result in an award of costs include delay in providing information or other failure to adhere to deadlines and prolonging the proceedings by introducing a new ground of appeal or issue.

Reasons

4. The Council contends that, in applying for an award of costs against it, the appellant has unnecessarily prolonged proceedings by introducing new issues months after the appeal was decided. As a result the Council has incurred costs in having to revisit the appeal and make representations on matters that it should not have to address. The Secretary of State is unsure what the Council means by this but it seems that the Council is conflating the appellant's actions during the appeal process with its actions as part of its costs application against the Council (which is the subject of a separate decision). As the appellant says, the appellant is not arguing in its costs application whether the EN was valid as that issue has been decided; it is simply responding to the implications of the Inspector's appeal decision. The appellant is entitled to apply for costs against the Council and, in support of its application, to refer to the Inspector's appeal decision and his conclusion that the EN was invalid and should be quashed. In doing so, the appellant is clearly not seeking to re-open the appeal or to prolong the appeal proceedings by introducing new issues. The extent to which the Council considers it necessary to refer to the Inspector's appeal decision, and any other matters it believes to be relevant, as part of its cost application is a matter for the Council's judgement.
5. The Council has not identified any behaviour on the part of the appellant during the appeal process which the Secretary of State deems unreasonable and which has led the Council to incur unnecessary or wasted expense. An award of costs against the appellant will not therefore be made.
6. The role of the Secretary of State in this costs application is to decide whether the appellant behaved unreasonably and caused the Council to incur unnecessary or wasted expense in the appeal process. The Council clearly takes issue with the Inspector's appeal decision, and with the decision to accept the appellant's costs application for consideration, but these are not matters which the Secretary of State can address when determining this application. If the Council felt that the Inspector's decision was flawed on a point of law it was open to it to challenge the decision in the courts, regardless of any costs application that the appellant might make. Furthermore, the planning merits of the appeal is not something which the Secretary of State can take into account when determining this application. The decision to refuse this application does not imply any view on the Council's reasons for taking enforcement action.
7. A copy of this letter has been sent to the appellant.

Yours sincerely

Richard Holland

Authorised by the Secretary of State to sign in that behalf