



The Planning Inspectorate

Costs & Decisions Team

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Your Ref: 22-327:AF:RG

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

Date: 23 November 2023

BY EMAIL ONLY

Dear Mr Gascoigne

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, on behalf of the appellant, made on 18 September 2023 against Warrington Borough Council (the Council). The appeal, dated 3 August 2022, was against an enforcement notice (EN) issued by 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 allowed in the terms set out below.

Basis for determining the costs application

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. Councils may take enforcement action when they regard it as expedient, but they are expected to exercise care when deciding to issue an EN. The PPG warns that Councils are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the EN in the first place or ensure that it was accurate.

Reasons

4. In his appeal decision of 21 August 2023 the Inspector concluded that the EN did not clearly specify the steps required for compliance and it could not be corrected without causing injustice to the appellant; the EN was therefore invalid and was quashed. The appellant contends that, in serving a flawed EN, the Council behaved unreasonably and the appellant has needlessly incurred costs in appealing against the EN.
5. Having initiated enforcement action it was the Council's responsibility, and not the appellant's, to make sure that the EN was accurate; the Inspector concluded that it was not accurate and was invalid. The Council acted unreasonably in serving the EN worded as it was. As a consequence of the Council serving a flawed EN the appellant's grounds of appeal were not considered and it incurred wasted expense in the appeal process as a result. A full award of the appellant's appeal costs will therefore be made.
6. The role of the Secretary of State in this costs application is to decide whether the Council behaved unreasonably and caused the appellant to incur unnecessary or wasted expense in the appeal process. The Council is clearly unhappy with the Inspector's appeal decision, and with the decision to accept the 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 award costs against the Council does not imply any view on the Council's reasons for taking enforcement action or on the planning merits of the appeal.

COSTS ORDER

7. Accordingly, the Secretary of State for Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 174 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, HEREBY ORDERS that Warrington Borough Council shall pay to Land and Securities Limited its costs of the enforcement appeal proceedings before the Secretary of State, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concern an appeal described in paragraph 1 of this letter.
8. You are now invited to submit, on behalf of the appellant, details of those costs to Warrington Borough Council with a view to reaching an agreement on the amount.
9. A copy of this letter has been sent to Warrington Borough Council.

Yours sincerely

Richard Holland

Authorised by the Secretary of State to sign in that behalf