



Costs Decisions

Inquiry Held on 20 and 21 February 2024

Site visit made on 21 February 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Costs applications in relation to the following appeal references:

Costs application A - APP/X0415/C/22/3293676

Costs application B - APP/X0415/C/22/3293677

Costs application C - APP/X0415/C/22/3293678

Costs application D - APP/X0415/C/22/3293679

Traps Meadow, Village Road, Whelpley Hill, Buckinghamshire HP5 3RL

- The applications are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - Costs application A is made by Colin Smith, costs application B is made by Christine Smith, costs application C is made by Richard Smith and costs application D is made by Claire Smith for a full award of costs against Buckinghamshire Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission a material change of use of the land to a sui generis mixed use, comprising commercial and residential by virtue of the siting on the Land (currently in the approximate position shown cross-hatched on the Plan) of a mobile home for residential occupation and associated residential paraphernalia ("the Unauthorised Use"), and, operational development comprising the laying of hardstanding in the approximate position shown hatched on the Plan ("the Unauthorised Development").
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Costs applications in relation to the following appeal references:

Costs application E - APP/X0415/C/22/3293676

Costs application F - APP/X0415/C/22/3293677

Costs application G - APP/X0415/C/22/3293678

Costs application H - APP/X0415/C/22/3293679

Traps Meadow, Village Road, Whelpley Hill, Buckinghamshire HP5 3RL

- The applications are 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 applications are made by Buckinghamshire Council for a full award of costs against Colin Smith (appeal reference APP/X0415/C/22/3293676), Christine Smith (APP/X0415/C/22/3293677), Richard Smith (APP/X0415/C/22/3293678) and Claire Smith (APP/X0415/C/22/3293679).
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission a material change of use of the land to a sui generis mixed use, comprising commercial and residential by virtue of the siting on the Land (currently in the approximate position shown cross-hatched on the Plan) of a mobile home for residential occupation and associated residential paraphernalia ("the Unauthorised Use"), and, operational development comprising the laying of hardstanding in the approximate position shown hatched on the Plan ("the Unauthorised Development").
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Decisions

Costs Applications A, B, C and D

1. The applications for an award of costs are allowed in the terms set out below.

Costs Applications E, F, G and H

2. The applications for an award of costs are allowed in the terms set out below.

Reasons

3. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Unreasonable behaviour can relate to procedural as well as substantive matters.

Costs Applications A, B, C and D - the submissions for the appellants

4. In summary, the applications for costs are as follows: -
 - The enforcement notice was not prepared with adequate prior investigation and the extent of unauthorised hardstanding was not accurate. This was subsequently agreed by the main parties at the Inquiry in terms of a corrected plan which shows a reduced unauthorised hardstanding area.
 - The Council has not substantiated its reasons for taking enforcement action and its case was based on vague and generalised assertions.
 - The residential mobile home could be lawfully stationed on the land.
 - Parking on the street would be dangerous whereas on the land it is not.
 - The Council indicated in June 2023 that the notice would be withdrawn and there have been no material changes to the situation since that time.
 - The unauthorised hardstanding was permitted development.
 - The hardstanding would be acceptable if concrete hardstanding at the 'kennels' building on the land were removed, and the best interests of the children should have been considered.
 - Temporary planning permission should have been considered 'pending the new house being completed'.
 - It was not necessary to demonstrate very special circumstances given that apart from the SAC/SANG issue, planning permission would be granted for a dwellinghouse on the land.
 - The imposition of planning conditions, including those relating to the SAC/SANG, would have addressed all harm.
 - It was unreasonable to persist with the enforcement notice even though planning permission was likely to be approved for a dwellinghouse on the land.
 - The Council should have considered the case history about immunity regarding the stationing of a mobile home and should have concluded that the hardstanding was permitted development by virtue of Class J of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The Council has caused long delays in terms of being able to erect a new dwellinghouse on the land.

Costs Applications A, B, C and D - The response by Buckinghamshire Council

5. In response to the costs applications, the Council comment as follows: -

- The Council's case is not based on vague or generalised assertions.
- The Council has never made threats against the appellants.
- The suggestion that the mobile home is immune from a storage point of view misunderstands that the notice can require the removal of chattels, such as a mobile home, that are part and parcel of a material change of use.
- Any communication about the withdrawal of the notice was based on the grant of planning permission for a dwellinghouse on the land. Things moved on following that email exchange and it was reasonable for the Council to choose to defend the notice because it was defensible on the merits of the case.
- The Council resisted the ground (a) appeal for reasons other than the SANG. Furthermore, the appellants' counsel conceded during the roundtable discussion on SANG that it is not possible for conditions or a s.106 agreement to address SAC/SANG issue for the residential component of the mixed-use breach of planning control and the ground (a) appeal.

Costs Applications A, B, C and D Reasoning and Conclusion

6. While the evidence indicates that the Council's planning enforcement officer did not go onto the site to take detailed measurements in respect of the alleged unauthorised hardstanding, I am nonetheless satisfied that in deciding that *'it appears to it that there has been a breach of planning control'*, it did undertake reasonable prior investigations which comprised a view of the site from public land, the consideration of aerial photographs and the examination of representations made by complainants. I also point out, although not determinative to my finding in respect of this matter, that the notice was issued during the Covid-19 Pandemic. It is perhaps the case that the Council were trying to minimise on-site visits at this time.
7. It was the case that during course of the appeals, it became apparent that the boundary of the unauthorised hardstanding was drawn too widely on the plan appended to the notice. Indeed, it is smaller than that which was originally identified by the Council when they considered that it *'appears'* that a breach of planning control has taken place. I accept that the corrected plan also excludes a strip of grass which the evidence indicates was not an area of hardstanding when the notice was issued. However, in the context of what I find was reasonable prior enforcement notice investigations, coupled with the fact that the notice only requires hatched 'hardstanding' to be removed from the land, I do not find that the Council has displayed unreasonable behaviour leading to the appellants wasting time and expense in the appeal process.
8. While I have decided that in respect of the plan, the notice can be corrected and without injustice being caused to the main parties, this does not mean that the Council acted unreasonably in respect of prior enforcement notice

investigations. In respect of this matter, I do not find that the appellants have been put to wasted time and expense in the appeal process.

9. I am satisfied that the Council has reasonably substantiated its position in terms of issuing the notice. Reasons are given in the notice, and the Council's statement of case and associated proof of evidence seek to substantiate why it was expedient to take enforcement action. While it is evident that a lawful B8 use exists on the land, there is no evidence that the mixed-use breach of planning control is lawful including the residential component. I do not find that the Council's case was based on vague or generalised assertions.
10. The appellants make further comments about the 'stationing' of a caravan on the land as part its costs applications. The breach of planning control (material change of use) does not relate to the 'stationing' of a caravan/mobile home on the land. It relates to a mixed use including a residential component comprising a caravan/mobile home which is in use for residential purposes. I do not find that the Council has acted unreasonably in respect of the matter pertaining to the alleged storage of a caravan/mobile home on the land. This is a matter that I have considered in respect of the ground (f) appeals and where I address the purpose of the notice.
11. The claim made through the costs applications that parking on the street would be '*dangerous*' is not borne out in terms of the appellant's ground (a) appeal evidence. Furthermore, it is not clear in what way the Council has purported to have acted unreasonably in this regard. There is certainly no objective evidence that the Council has displayed unreasonable behaviour leading to wasted time and expense in the appeal process in terms of this matter.
12. As part of the ground (a) appeal considerations, I have examined the potential to consider conditions (including those relating to a temporary consent and in respect of the SAC/SANG issue) and have found that the deemed planning application should be refused. While the appellants do not agree with the views expressed by the Council in respect of the ground (a) appeal, I do not find that unreasonable behaviour has been demonstrated leading to wasted time and expense in the appeal process.
13. The Council's consideration of the need for very special circumstances to exist to justify granting harmful development in the Green Belt was well founded. Indeed, I have dealt with the ground (a) appeal on the same basis myself.
14. The Council were entitled to continue with the enforcement notice and to not withdraw it. While I share the appellants' frustrations about the lack of progress in terms of providing SANG in the area, the mobile home is in use for residential purposes. In the absence of SANG it was never going to be possible to conclude that harm would not be caused to the integrity of the SAC. Despite this, throughout the course of the appeals the appellant maintained that the SAC/SANG issue could be controlled by planning condition or a planning obligation.
15. There can be no certainty or guarantee that planning permission will be granted or indeed implemented for a dwellinghouse on the land notwithstanding the appellants' claimed intentions. I find that the Council has acted reasonably in terms of both issuing and continuing with the notice. It is

important to add that the breach of planning control also includes an unauthorised hardstanding which has nothing to do with the SAC/SANG issue. In this regard, the appellants suggestion that the notice should have been withdrawn by the Council is, in any event, somewhat confusing.

16. I find that the Council has reasonably substantiated its position that the hardstanding is not permitted development. However, the Council did concede at the Inquiry that it had not had regard to the definition of a 'warehouse' in Class O of part 7 of Schedule 2 of the GPDO. In that regard, I find that the Council has displayed unreasonable behaviour. Therefore, wasted time and expense has been demonstrated in terms of the appellants preparing for and responding to this matter.
17. I note the appellants' concern about the time it is taking to provide SANG and a fully detailed SAC mitigation strategy for residential developments within the zone of influence. That is a matter that the appellants will need to pursue separately with the Council. However, and, notwithstanding this matter, the Council were reasonably entitled to pursue enforcement action in the knowledge that unauthorised development had taken place on the land and planning harm was occurring now. I do not therefore find that the Council unreasonably issued a notice.
18. For the above reason (i.e., the ground (c) appeal), I conclude that a partial award of costs is justified.

Costs Applications E, F, G and H – the submission for Buckinghamshire Council

19. In summary, the applications for costs are as follows: -

- Several grounds of appeals had no real prospect of succeeding.
- The appellants have not reasonably substantiated the view that the black block on the plan was drawn too tightly, particular in the context of comments made by a previous Inspector regarding the planning unit in commercial use.
- The witness for the appellants conceded at the Inquiry that permitted development rights did not exist in terms of the residential mobile home on the land.
- The witness for the appellants introduced a new point in her proof of evidence relative to the statement of case about the mobile home having a lawful storage use.
- The appellants did not properly engage in the statement of common ground process about laying a new area of hardstanding and that point was only conceded as part of the cross examination of the witness for the appellants, albeit that it did not relate to strips of grass and a '*5 sq m section of authorised hardstanding*'.

Costs Applications E, F, G and H - The response by the appellants

20. In response to the Council's costs applications, the appellants have responded as follows: -

- The notice is not accurate. An inaccurate notice could have been avoided by more diligent prior investigations, particularly in terms of the attached plan and the extent of the unauthorised hardstanding. The unauthorised hardstanding was changed in terms of an amended plan at the Inquiry. The originally delineated and alleged unauthorised hatched hardstanding included lawful hardstanding and a strip of grass and this was a significant error.
- The notice should not have required the removal of the mobile home given that a one could be lawfully 'stationed'.
- The concession made by the appellants' witness that the residential mobile home was not permitted development is evidence of the '*reasonableness of her approach, not the opposite*'.
- The stationing of a mobile home on the land is not a ground (f) claim but is a ground (d) claim.
- The stationing of a mobile home is not a new point as it was explained in the proof of evidence of the appellants' witness.

Costs Applications E, F, G and H Reasoning and Conclusion

21. On the evidence that is before me, I do not find that in respect of the residential mobile home, the ground (c) appeals ever had a prospect of succeeding. The claim made that the residential mobile home was permitted development was not reasonably substantiated. Indeed, the witness for the appellants conceded this point at the Inquiry. In respect of the unauthorised hardstanding area, while I have not agreed with the appellants that this is permitted development, I am nonetheless satisfied that a reasonable case was made by them in terms of this matter, and essentially my conclusion was reached having regard to planning judgement on a fact and degree basis.
22. In respect of the ground (d) appeals, the appellants have not demonstrated that the mixed use within a single planning unit has continuously existed for ten years. Furthermore, and noting that the approximate area of hatching on the plan appended to the notice was corrected as part of my decision to uphold the notice, the appellants put forward no reasonable or objective evidence to support a claim that new hardstanding had not been formed on the land, or that it was immune from enforcement action owing to being in situ for four years. In this regard, I find that the appellants unreasonably pursued the ground (d) appeals resulting in wasted time and expense in the appeal process.
23. In respect of the ground (a) appeal, to the extent that the mobile home was already in occupation for residential purposes I do not find that the appellants reasonably had regard to the requirements of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). The appellant was clearly aware that it was not possible to conclude that proposal would not cause harm to the integrity of the SAC in the absence of SANG coupled with an approved detailed strategy for dealing with residential development proposals. The effect of the residential component of the mixed-use breach of planning control on SAC is a matter that I raised with the appellant and the Council at a very early stage (i.e., pre-Inquiry note dated 19 July 2023). Despite this, and in the absence of SANG and an appropriate mitigation strategy to ensure no harm was being caused to the SAC, the appellant, who is professionally represented, nevertheless unreasonably continued with the ground (a) appeal (i.e., the

- material change of use breach of planning control) in the knowledge that success was unlikely owing to the requirements of the Habitats Regulations.
24. It is noteworthy that in respect of the above matter, the appellants professional representative commented on 10 January 2024, in response to not holding the enforcement notice and reserved matters appeals in abeyance until December 2024, *'to put matters bluntly, from the appellant's point of view at least there is simply no point in incurring the expense of an appeal which will be likely doomed to a failure (my emphasis) in view of the lack of progress in respect of the above measures'*. In respect of the residential element of the mixed-use breach of planning control and the ground (a) appeal, I find that the appellants have displayed unreasonable behaviour and that the Council has been put to wasted time and expense in this regard.
25. There was confusion at the Inquiry in terms of whether the appellant did or did not want to table a planning condition or to prepare a planning obligation in respect of the SAC/SANG matter. Comments were made by Counsel that *'I need to take instructions.'* This was not helpful to the smooth running of the Inquiry but, in the end, Counsel confirmed that the appellant did not want to propose a condition or to complete a planning obligation. This concession amounts to unreasonable behaviour in the appeal process and hence wasted time and expense for the Council in dealing with the matter throughout the course of the ground (a) appeal.
26. The Council is correct that the witness for the appellants introduced a new point in her proof of evidence relative to the statement of case. This relates to the point about the mobile home allegedly having a lawful storage use. Proofs of evidence are required to accord with statements of case. Indeed, paragraph 11.12.3 of the Planning Inspectorate's Procedure Guide: Planning Appeals (updated 2024) states that *'the case for the appellant, the LPA (and any Rule 6 party) should be set out in full in their 'statement of case'. The main role of a proof of evidence is to allow expert witnesses to: have previously provided evidence in one document which helps them to present their case at the inquiry give their professional opinion on evidence provided by other parties in their statements of case'*.
27. Time was spent at the Inquiry dealing with the alleged storage use when I do not find that it was expressly considered in the appellants' statement of case. In any event, I do not find that this point was reasonably made at the Inquiry in the context of either the ground (d) or (f) appeals. The purpose of the notice is to remedy the breach of planning control. It was unreasonable to pursue this point in this context and hence the Council was put to wasted time and expense in dealing with this matter at the Inquiry. I do not find that the mobile home storage issue was relevant to the ground (d) appeals. This is because an appeal made under ground (d) must relate to matters alleged in the breach of planning control. In this case, the mobile home shown on the plan appended to the notice was/is not in use for storage purposes. The mobile home as shown on the plan appended to the notice was/is in use for residential purposes.
28. It is disappointing that a statement of common ground (SofCG) was not agreed by the main parties. In my judgement, some of the issues that arose at the Inquiry could have been addressed or narrowed as part of the completion of a SofCG. Nonetheless, the hatched area on the plan attached to the notice has

been corrected, albeit without injustice being caused to the main parties. In respect of the alleged unauthorised hardstanding, the evidence indicates that the appellants did, to some extent, try to engage in the SofCG process. Indeed, as part of this process the appellants commented, '*not all the black hatched area on the plan is hardstanding*'. That was subsequently found to be true at the Inquiry, albeit that it was a minor defect in terms of a narrow strip of grass to its northerly extent.

29. For the above reasons, I conclude that the appellants have displayed unreasonable behaviour, and this has resulted in the Council wasting time and expense in the appeal process. Therefore, a partial award of costs is justified.

Costs Applications A, B, C, D - Costs Order

30. 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 Buckinghamshire Council shall pay to Colin Smith (appeal reference APP/X0415/C/22/3293676), Christine Smith (APP/X0415/C/22/3293677), Richard Smith (APP/X0415/C/22/3293678) and Claire Smith (APP/X0415/C/22/3293679) the partial costs of the appeal proceedings described in the heading of these decisions and limited to matters relating to preparing for and responding to matters relating to the definition of a 'warehouse' in respect of the hardstanding area and the ground (c) appeals; such costs to be assessed in the Senior Courts Costs Centre if not agreed.
31. The applicants are now invited to submit to Buckinghamshire Council, to whom a copy of these decisions have been sent, details of those costs with a view to reaching agreement as to the amount.

Costs Applications E, F, G and H – Costs Order

32. 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 Colin Smith (appeal reference APP/X0415/C/22/3293676) shall pay to Buckinghamshire Council the partial costs of the appeal proceedings described in the heading of these decisions and limited to matters relating to preparing for and responding to the ground (a) appeal (the mixed use breach of planning control only); the ground (c) appeal (residential element only); the ground (d) appeal, and the alleged lawful storage use of the caravan; such costs to be assessed in the Senior Courts Costs Centre if not agreed.
33. 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 Christine Smith (APP/X0415/C/22/3293677), Richard Smith (APP/X0415/C/22/3293678) and Claire Smith (APP/X0415/C/22/3293679) shall pay to Buckinghamshire Council the partial costs of the appeal proceedings described in the heading of these decisions and limited to matters relating to preparing for and responding to the ground (c) appeals (residential element only); the ground (d) appeals, and the alleged lawful storage use of the

caravan; such costs to be assessed in the Senior Courts Costs Centre if not agreed.

34. Buckinghamshire Council are now invited to submit to the applicants, to whom a copy of these decisions have been sent, details of those costs with a view to reaching agreement as to the amount.

D Hartley

INSPECTOR