

Costs Decisions

Inquiry Held on 24, 25, 26 January and 6 March 2024

Site visit on 6 March 2024

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

an Inspector appointed by the Secretary of State

Decision date: 3rd April 2024

Costs application in relation to Appeal A: Ref APP/X0360/C/22/3300653 Land at Fairview Farm, Forest Road, Hurst RG40 5SA

- The application is 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 application is made by Wokingham Borough Council for a full award of costs against Mr S Proctor.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the Land to a mixed commercial and storage use and the erection of three buildings.
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Costs application in relation to Appeal B: Ref APP/X0360/C/22/3300650 Land at Fairview Farm, Forest Road, Hurst RG40 5SA

- The application is 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 application is made by Wokingham Borough Council for a full award of costs against Mrs P Proctor.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the Land to a mixed commercial and storage use and the erection of three buildings.
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Costs application in relation to Appeal C: Ref APP/X0360/C/22/3300651 Land at Fairview Farm, Forest Road, Hurst RG40 5SA

- The application is 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 application is made by Wokingham Borough Council for a full award of costs against Mr G Proctor.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the Land to a mixed commercial and storage use and the erection of three buildings.
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Costs application in relation to Appeal D: Ref APP/X0360/C/22/3300652 Land at Fairview Farm, Forest Road, Hurst RG40 5SA

- The application is 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 application is made by Wokingham Borough Council for a full award of costs against Mr L Proctor.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the material change of use of the Land to a mixed commercial and storage use and the erection of three buildings.
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**Costs application in relation to Appeal N: Ref APP/X0360/C/22/3305959
Land at Fairview Farm, Forest Road, Hurst RG40 5SA**

- The application is 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 application is made by Wokingham Borough Council for a partial award of costs against Mr G Proctor (MLP).
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the erection of a building and the material change of use of the Land from equestrian to a mixed use for parking and storage purposes including the siting of shipping containers.
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**Costs application in relation to Appeal O: Ref APP/X0360/C/22/3305960
Land at Fairview Farm, Forest Road, Hurst RG40 5SA**

- The application is 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 application is made by Wokingham Borough Council for a partial award of costs against Mrs P Proctor.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission, the erection of a building and the material change of use of the Land from equestrian to a mixed use for parking and storage purposes including the siting of shipping containers.
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**Costs application in relation to Appeal P: Ref APP/X0360/W/21/3289899
Fairview, Forest Road, Binfield RG40 5SA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wokingham Borough Council for a full award of costs against Machine Move Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for an office and staff welfare building (retrospective).
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**Costs application in relation to Appeal Q: Ref APP/X0360/W/22/3292286
Fairview, Forest Road, Binfield RG40 5SA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wokingham Borough Council for a full award of costs against Machine Move Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for use of land and buildings for the parking of commercial vehicles and use of buildings for related storage purposes (retrospective).
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**Costs application in relation to Appeal R: Ref APP/X0360/W/21/3285010
Fairview Bungalow, Forest Road, Binfield RG40 5SA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wokingham Borough Council for a full award of costs against Mr & Mrs G Proctor.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a garage (retrospective).
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Decisions

1. The applications for costs awards as regards Appeals A, B, C, D and O are allowed in the terms set out below.
2. The applications for costs awards as regards Appeals N, P, Q and R are refused.

Procedural Matter

3. I have identified the various appeals with the lettering used in my Decision.

Reasons

4. 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.
5. The PPG makes clear that the right of appeal should be exercised in a reasonable manner. Further, that appellants are at risk of a substantive award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding¹.
6. The ground (d) appeals as regards Appeals A, B, C and D had no reasonable prospect of succeeding given the strong evidence against immunity constituted by what had been written by the appellants' agent (the same agent in the appeals before me) in the response to the Planning Contravention Notice (PCN), the application form for the Lawful Development Certificate (LDC) and the planning application in respect to the office and staff welfare building (also known as 'Building 1'). The agent, as an experienced planning professional, could have been reasonably expected to know the implications of that evidence in terms of ground (d) success and to advise his clients accordingly. Yet the appellants pursued ground (d) through to the close of the inquiry, and additionally were insufficiently precise in their evidence (such as to the dates that other buildings were erected). The above constituted unreasonable behaviour which caused the Council to incur unnecessary costs in dealing with this ground of appeal.
7. The ground (f) appeals as regards Appeals A, B, C and D were pursued on the basis that the fencing, posts and gates were permitted development under Article 3(1), Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. That argument, were it to be successful, was partly dependent on the heights of these structures. Yet no details of measurements were provided throughout the entire inquiry. Further, it was quickly evident on my site visit that the gates and their posts were too high for permitted development rights to apply, and this was confirmed by the subsequent measurements I requested to be taken before leaving the site. The ground (f) appeals never had any reasonable prospect of succeeding on this basis. To pursue them in this way was unreasonable behaviour which caused the Council to incur unnecessary costs in dealing with this ground of appeal.

¹ Paragraph: 053 Reference ID: 16-053-20140306

8. The ground (g) appeals as regards Appeals A, B, C and D had no reasonable prospect of succeeding as they were not supported by any reasonable amount of evidence that could bring about that outcome. The single paragraph dealing with this ground in the agent's proof of evidence² was woefully inadequate in explaining why the notice compliance period was said to be insufficient: it did not assess how much time would be necessary to comply or provide any supporting evidence to back up any such case. Similarly, the live evidence at the inquiry (while emphatic as to the difficulties that might be encountered in re-location to an alternative site) did not add much further. While that evidence referred to historic difficulties in acquiring an open yard for vehicles, no substantive evidence was presented (as to recent searches/enquiries, for instance) which may have informed usefully how much compliance time was reasonably needed. This was unreasonable behaviour which caused the Council to incur unnecessary costs in dealing with this ground of appeal.
9. Appeal O was withdrawn at the inquiry, confirmed by letter of 31 January 2024, without any real explanation. The PPG is clear that an award of costs can be made if an appellant withdraws an appeal without good reason. I find therefore that this was unreasonable behaviour (having not been provided with a reason, let alone a good one) which caused unnecessary costs to the Council (having dealt with in its proof of evidence although not at the inquiry).
10. As regards the appeals relating to refusals of planning permission (Appeals P, Q and R) and the deemed planning applications under ground (a) (Appeals A and N), the PPG says that a substantive award of costs against an appellant may occur when:

*"the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence"*³

It was conceded at the inquiry that the appeal developments were not in accordance with the development plan. While I have dismissed the appeals and refused the deemed applications due to the weight I have given to planning harm and policy conflict, the appellants did advance a number of material considerations with levels of evidence which were not at such inadequate levels so as to constitute unreasonable behaviour.

Conclusions and Costs Orders

Appeal A

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified (grounds (d), (f) and (g) but not (a)).
12. 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

² Paragraph 5.59

³ Paragraph: 053 Reference ID: 16-053-20140306

Mr S Proctor shall pay to Wokingham Borough Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with grounds (d), (f) and (g); such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mr S Proctor to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal B

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.
14. 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 Mrs P Proctor shall pay to Wokingham Borough Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mrs P Proctor to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal C

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.
16. 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 Mr G Proctor shall pay to Wokingham Borough Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mr G Proctor to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal D

17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.
18. 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 Mr L Proctor shall pay to Wokingham Borough Council the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mr L Proctor to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal N

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Appeal O

20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.
21. 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 Mrs P Proctor shall pay to Wokingham Borough Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred up to the exchange of the proofs of evidence; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Mrs P Proctor to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal P

22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Appeal Q

23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Appeal R

24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Andrew Walker

INSPECTOR