



Costs Decisions

Site visit made on 3 January 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 May 2024

Costs application in relation to

Appeal A Ref: APP/W3330/C/23/3321487,

Appeal B Ref: APP/W3330/C/23/3321488,

Appeal C Ref: APP/W3330/C/23/3321490, and

Appeal D Ref: APP/W3330/C/23/3321491

Land at Parks Farm, Brompton Ralph, Taunton, Somerset TA4 3PS

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr James Flannigan and Ms Rebecca Briar for a full award of costs against Somerset West and Taunton Council.
 - The appeals were against enforcement notices alleging the change of use of the Land to use for the stationing of a mobile home (Appeals A and B) and the change of use of the Land to use for the storage of non-agricultural items (Appeals C and D).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

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.
3. The applicants argue that the Council has issued a flawed enforcement notice, and that they have failed to conduct a thorough investigation prior to the issuing of the notices. The PPG emphasises in relation to enforcement action that local planning authorities must carry out adequate prior investigation and will be 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 notice or ensure that it was accurate. Effective enforcement action relies on accurate information about an alleged breach of planning control.
4. In respect of Appeals A and B, I have found that the Notice is a nullity, and no further action will be taken. This is due to a defect in the Notice that I am unable to correct without prejudice. In my view, it was unreasonable for the Council to issue the Notice with such a defect and as a result the applicants have been put to the expense of pursuing an appeal, against a flawed Notice, which should not have been necessary.
5. In respect of Appeals C and D, it is the appellants case that these appeals could have been avoided altogether if a more thorough investigation had been undertaken in terms of the site and the use taking place. The Council contends

that it has undertaken a thorough investigation and has engaged with the appellants and their agents.

6. In terms of the investigation undertaken by the Council, it is clear that matters have been ongoing for a significant period and there has been extensive contact between the Council and the appellants. I have not been pointed to any inaction on the part of the Council that would lead me to conclude that any enforcement investigation was inadequate, despite my disagreeing with the contents of the enforcement notice itself.
7. In addition to the matters concerning the notices and the appeals, a site visit was arranged which was to be undertaken on an accompanied basis, with representatives from both main parties in attendance. At my arrival at the arranged time and date, the applicants' representative was present but there was no representative from the Council. After contacting the Council, I was informed that an Officer was on their way to the site and whilst waiting I undertook a visit on an Access Required basis, with the applicants' representative providing access to all areas of the site.
8. By the time I had viewed the entire site, no Council representative had arrived. Following this, the applicants have sought to add this matter to their costs claim and the comments of the Council were sought. No response has been received. I therefore find that the Council's unexplained non-attendance at the site visit constitutes unreasonable behaviour and any costs incurred by having the applicants' representative attend the site should be borne by the Council.
9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a partial award of costs, limited to those costs incurred in respect of Appeals A and B, as well as the site visit, is therefore warranted.

Costs Order

10. 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 Somerset West and Taunton Council shall pay to Mr James Flannigan and Ms Rebecca Briar the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of Appeals A and B, as well as the site visit; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicants are now invited to submit to Somerset West and Taunton Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Martin Allen

INSPECTOR