



Costs Decision

Inquiry held on 21-22 May 2024

Site visit made on 22 May 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 31 May 2024

Costs application A in relation to Appeal APP/N0410/C/21/3285729 Land at and around Gladwins Wood, Pinstone Way, Tatlin End , Denham, Bucks, SL9 7BJ

- 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 Mr James Turner for a partial award of costs against Buckinghamshire Council - South Area (South Bucks).
- The inquiry was in connection with an appeal against an enforcement notice alleging the material change in use of the Land to a Sui Generis mixed use comprising various uses including the storage of scaffolding, containers, vehicles, builder's materials and waste etc.

Costs application B in relation to Appeal APP/N0410/C/21/3285729 Land at and around Gladwins Wood, Pinstone Way, Tatlin End , Denham, Bucks, SL9 7BJ

- 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 Buckinghamshire Council - South Area (South Bucks) for a partial award of costs against Mr James Turner.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the material change in use of the Land to a Sui Generis mixed use comprising various uses including the storage of scaffolding, containers, vehicles, builder's materials and waste etc.
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Decisions

Application A - Mr Turner

1. The application for an award of costs is refused.

Application B – South Bucks

2. The application for a partial award of costs is allowed in the terms set out below.

Background to the Applications

3. 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.
4. The inquiry dealt with both the enforcement appeal referenced above and an appeal against the failure to issue a decision on an application for an LDC as both issues were intertwined. Hence, while the appellant seeks a full award for

the enforcement notice appeal it is a partial award in terms of the inquiry as a whole. The Council seek a partial award for the ground (a) appeal only

Application A – Mr Turner

5. The costs application is limited to the ground (e) appeal. The appellant argues that faced with the ground (e) appeal, and presumably because it was so obviously going to be successful, the Council should have withdrawn the notice and re-issued it, properly serving it on everyone at the site. Thus it was unreasonable to continue with the inquiry into the enforcement notice given the notice was bound to be quashed.
6. The Council respond that they were confident the notice had been properly served and so the ground (e) would not succeed.

Reasons – Application A

7. It is clear from my decision letter that I agreed with the Council and the appeal on ground (e) did not succeed. I do not need to repeat the reasons here, but as the appellant's claim is predicated solely on success of ground (e) and it did not succeed then it follows there was no unreasonable behaviour on the part of the Council and a costs award is not warranted.

Application B – Buckinghamshire Council

8. The Council argue that the late withdrawal of the ground (a) was unreasonable and costs of dealing with the ground (a) should be awarded from the date of the appeal to the date the ground was withdrawn.
9. Mr Turner responds that the ground (a) was carefully targeted only at certain uses and was withdrawn as soon as the Council's full case was seen. Such a withdrawal was an example of reasonable behaviour not the opposite.

Reasons

10. The Council's claim is in two parts, firstly, that the ground (a) should never have been made and secondly it was withdrawn late with no reasons given. I agree that the ground (a) had little chance of success. Not only was the site in the green belt and was inappropriate development with a significant loss of openness, but there had been a severe loss of ancient woodland and a concomitant loss of bio-diversity. The appellant's own ecological evidence accepts this and is reduced to simply recommended no further encroachment into the surrounding woodland and to clear up some of the waste and oil spillage within the site. It also recommends further surveys of habitats which could have a knock on affect on the size of the site and the operations of some of the occupiers. Given the difficulty the Council and the Forestry Commission have had in trying to access the site, monitoring the success of even the limited suggestions in the ecology report would be difficult. In any event, 'not causing further damage' is of very little weight when balanced against the harms described above.
11. The appellant's main argument was the loss of jobs if they had to close down. There are indeed a lot of jobs dependant on the success of the appeal but that is often the case, especially in green belt appeals, and while some may find it difficult to relocate, the fluidity of occupation over the years suggests companies can and do move in and out. There was no evidence that the

various companies involved would have to cease trading, and many would be able to relocate. None of the businesses are dependent on a green belt site so many should be able to carry on trading elsewhere. The closure of the site does not mean every job will be lost.

12. It is difficult, when the planning merits have not been argued, to reach the conclusion the ground should not have been made in the first place. However, the appellant says he withdrew the ground once he had seen the Council's proofs. While the Council's Forestry Commission and Ecology evidence was pretty damning, none of it should have come as a surprise. This was a large, unlawful intrusion in the middle of a protected ancient woodland that was also in the green belt. The negative side of the balance is so weighted against the development that it would require something significant to even begin to suggest a ground (a) could be successful. The possible loss of an unknown number of jobs and halting the environmental destruction come nowhere near to outweighing the harm.
13. Although this was not tested my initial reaction was that the ground (a) had little chance of success and this view was obviously also shared by the appellant. However, that should have been clear from earlier on in the process. The appellant's statement of case makes a number of arguments that are incomprehensible. The land is previously developed land, there is a wide range of development on the land that is already agreed to be lawful, it is not inappropriate development in the green belt and there has been no harm to trees or to biodiversity. These are all patently false. Consequently, while it is possible to argue it was not unreasonable to advance a ground (a) in the first place, given the weakness of the arguments in the statement and the clear counter arguments in the Council's statement, I consider it should have been clear from the date this latter statement was received it was clear the ground (a) was doomed to fail and to pursue it up to the day before the inquiry was unreasonable. The Council have thus been put to unnecessary costs and a partial award is warranted.

Costs Order

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 Mr Jonathan Turner shall pay to Buckinghamshire Council - South Area (South Bucks), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the ground (a) appeal from the day after the date the Council's statement of case was received; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Mr Turner, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Simon Hand

INSPECTOR