The Planning Inspectorate

Costs & Decision Team

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Ian Briggs
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By email only

Your Ref:

Our Ref: APP/M2460/C/23/3326850

Date: 18 June 2024

Dear Sir

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 174 AND 322
LAND AT BRACKNELL FARM, LEICESTER ROAD, THURLASTON, LEICESTERSHIRE, LE9 7TJ
APPEAL BY MR MARTIN SMITH: APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities to refer to the Planning Inspector's decision dated 12 March 2024 concerning the appeal by Mr Martin Smith. The appeal was against an enforcement notice issued by Leicestershire County Council on 4 July 2023. The notice alleged a breach of planning control on land described above by:

> *'Without planning permission, a material change of use of the land from agriculture to a mixed use for agricultural use and a waste transfer centre'.*

2. This letter deals with your application, on behalf of the appellant, for a full award of costs against the Council as made in your written correspondence dated 8 and 29 April 2024. The Council replied on 22 April 2024. As these costs submissions have been made available to the parties it is not proposed to summarise them. They have been carefully considered.

Summary of decision

3. The costs application succeeds and a full award of costs is being made. The formal decision and costs order is set out in paragraphs 14 and 15 below.

Basis for determining the costs application

4. In enforcement notice appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party, irrespective of procedural method,

where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered in the light of the relevant guidance in the Government's Planning Practice Guidance (PPG), the appeal decision, the appeal papers, the written costs correspondence and all the relevant circumstances.

Reasons for the decision

7. All the available evidence has been carefully considered. Particular regard has been paid to the guidance at 048 of the PPG which refers to the risk of an award in the event that an enforcement notice is not accurate. The main basis of the costs application is that the Council acted unreasonably by issuing an enforcement notice which was concluded, on appeal, to be a nullity.

Conclusions

8. The Secretary of State notes that in this case your client's application for costs was made after the Inspector's appeal decision was issued. You have cited the outcome of the appeal in support of the costs application. Although a decision on a costs application does not follow directly from the result of the appeal itself the Secretary of State has taken into account as a material consideration the basis on which the enforcement notice was found to be a nullity.

9. The Inspector's appeal decision (paragraphs 3 and 4) stated:

> *"3. The enforcement notice identifies four requirements: a) Cease the use of the Land as a waste transfer centre; b) Remove all waste materials deposited on the Land as a result of its use as a waste transfer centre; c) Remove all machinery and other chattels placed on the Land for the purpose of its use as a waste transfer centre; and d) Return the Land to its former condition.*
>
> *4. The periods for compliance with the requirements are identified as a) Within two weeks from the date this notice takes effect; b) Within three (3) months from the date this notice takes effect; and c) Within six (6) months from the date this notice takes effect. There is no compliance period identified for requirement d)."*

The Inspector went on to conclude, with reference to the parties' written comments on the matter and relevant judicial authority, that because the compliance period for step d) was missing the notice failed to comply with Section 173(9) of the 1990 Planning Act (as amended) and was therefore found to be a nullity and could not be corrected.

10. There is some dispute between the parties about whether or not the appellant raised the matter of the omission of the compliance period in step d) of the notice during the early stages of the appeal. Notwithstanding this dispute, the Secretary of State finds it difficult to escape the conclusion that the onus was on the Council to ensure, at the outset, that the enforcement notice was correctly worded and not technically defective before proceeding to issue it. However, the Inspector's appeal decision clearly concluded that the missing timescale from the notice rendered it a nullity.

11. In the particular circumstances the conclusion drawn is that the Council acted unreasonably in issuing the enforcement notice (worded as it was). The practical consequence of the Council's error in issuing a notice that was found to be a nullity

on appeal was that the Inspector was unable to consider the appellant's grounds of appeal. As a result the appellant incurred wasted expense in the appeal process. A full award of costs is therefore considered justified. As a full award is being made there is no need for the Secretary of State to consider the other issues raised in the costs application.

12. For the avoidance of doubt, the Secretary of State's power to award costs is interpreted as enabling him to award to a party the costs necessarily and reasonably incurred in relation to the proceedings before him. He does not determine the amount payable. That will be for the parties to resolve by agreement on the evidence of expense actually incurred and wasted in the appeal process or failing that, in the context of an application to the Senior Courts Costs Office for detailed assessment.

13. This decision should not be taken to imply any view on the merits of the Council's decision to take enforcement action.

FORMAL DECISION

14. For these reasons, the Secretary of State has decided that a full award of costs, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

COSTS ORDER

15. 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 Leicestershire County Council shall pay to Mr Martin Smith his 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 concerned an appeal more particularly described in paragraph 1 of this letter.

16. You are now invited to submit, on behalf of the appellant, details of those costs to Leicestershire County Council with a view to reaching an agreement on the amount. A copy of this letter has been sent to them.

Yours faithfully

S Parsons

STEVE PARSONS
Authorised by the Secretary of State to sign in that behalf