



Costs Decisions

Inquiry Held on 7, 8, 9 and 10 May 2024

Site visit made on 22 May 2024

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

an Inspector appointed by the Secretary of State

Decision date: 24th June 2024

Costs applications in relation to Appeal Refs: APP/C3620/C/23/3319368; APP/C3620/C/23/3319369; APP/C3620/C/23/3319370

Brook Willow Farm, Motorcross Track, Woodlands Road, Leatherhead, Surrey KT22 0AN and shown edged red on the plan attached to the notice

- 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 Mr Bruce Burgess, Mrs Cathy Martin and Mr Blake Burgess respectively for a full award of costs against Mole Valley District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without Planning Permission the material change of use of the land for a motorcross track with associated jumps and rollovers.
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Decisions

1. The applications for awards of costs are refused.

Procedural Matters

2. 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. However, it is also clear that parties in planning appeals normally meet their own expenses.
3. The essence of the costs claims made is that the Council's case had no substance, and that it has failed to substantiate the reasons given for taking enforcement action.

Reasons

4. I am in no doubt that the Council's case was at times unclear and self-contradictory during the lifetime of the appeal. The Council's Statement of Case (SOC) expressed a position that the alleged breach had occurred between 2013 and 2018. It was also unhelpful in using the word 'intensification' (8 times) when, as the Council's advocate and sole witness at the Inquiry (Ms Visagie) explained, the author probably meant 'escalation' due to the technical legal implications of that former word. Ms Visagie also contradicted the Council's earlier case (SOC) by asserting that the material change of use (MCU) constituting the breach occurred in 2018/19/20.
5. Despite these issues, however, it is not disputed by the appellants (as there were no ground 'b' or ground 'c' appeals made) that the alleged use is a breach of planning control. The Council found it expedient to issue the notice to remedy that breach, and (while I have not found in the Council's favour in my

Appeal Decisions) it has made arguments of sufficient substance¹ against the appellants' claims of immunity so as not to constitute unreasonable behaviour for the purposes of the costs regime. The burden of proof is upon the appellants to make a successful case on ground 'd' – as they have done so – and accordingly it was for them to demonstrate when the MCU started and that the use continued over the relevant period to acquire immunity. It matters not that the Council changed its own position on when the MCU occurred. It was not unreasonable for the Council to challenge the case put forward by the appellants, for instance to put them to test that there was sufficient evidence to the required standard of proof (balance of probabilities) and that it was sufficiently precise and unambiguous.

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Andrew Walker

INSPECTOR

¹ For instance, but not exclusively, the off-site impacts of noise as reported by local residents and what this may have meant in terms of the use of the appeal site over time.