



Costs Decision

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 July 2024

**Costs application in relation to Appeal A Ref: APP/U1105/C/24/3342728
and Appeal B Ref: APP/U1105/C/24/3342729**

Higher Wick Farm, Wick, Honiton EX14 4TY

- 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 Barry Hooper of JY Hooper & Sons and Mrs Jean Hooper for a full award of costs against East Devon District Council.
 - The appeals were against an enforcement notice alleging the material change of use of the Land to a mixed use of agriculture and Use Class B2 (General Industrial) use by virtue of the use of a former agricultural barn as a steel fabrication workshop.
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Decision

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

Background

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 Appellants claim the Council has acted unreasonably in serving a notice without sufficient care and attention due to a lack of precision and confusion between the site and the alleged breach. It is argued that this has caused the Appellants to incur unnecessary costs associated with the appeal proceedings. It is further argued that the evidence shows the ground (d) appeals would have succeeded, and enforcement action would not have been necessary had the Council carried out thorough prior investigations.
4. In response, the Council accepts that the notice was drafted in a way that risked under-enforcement were it to be upheld. However, it is maintained that this was simply a drafting error and there was no unreasonable behaviour. Further, it is claimed that any expenses with regard to these appeals will not be wasted. This is because the Appellants indicate they will seek to regularise the breach of planning control through an application for a Certificate of Lawful Use or Development (LDC) or a planning application. The Council considers that the evidence prepared for these appeals would be critical to either application.

Reasons

5. Firstly, it is not apparent on the basis of the evidence before me that the ground (d) appeals were bound to succeed, nor that enforcement action would not have been necessary had the Council carried out more extensive prior investigations. Expediency is a matter for the Council.

6. However, the PPG advises that, for enforcement action, local planning authorities must carry out adequate prior investigation. They are 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 in the first place or ensured that it was accurate. As explained in my Decision, the notice was found to be invalid. In this instance, I find the issue of the inaccurate notice amounts to unreasonable behaviour.
7. It is not certain that the evidence gathered in relation to these appeals would be relevant should the Council seek to take further action or should the Appellants seek an LDC or a planning permission. Any further evidence will be dependent on the circumstances and that already produced may or may not be relevant.
8. If the notice had been properly drafted, the appeals would have continued, and the Appellants would not have been put to the further cost of any future enforcement action or application processes. In addition, the Appellants have incurred additional expense in responding to the queries that I raised in relation to matters of invalidity. This would not have been necessary had the notice been accurate.

Conclusion

9. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs 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 East Devon District Council shall pay to Mr Barry Hooper of JY Hooper & Sons, and Mrs Jean Hooper, 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.
11. The applicant is now invited to submit to East Devon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

D Moore

Inspector