



Costs Decision

Inquiry held on 1 and 2 October 2024

Site visit made on 2 October 2024

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2024

Costs application in relation to Appeal Ref: APP/P5870/C/24/3341924 268 Woodcote Road, Wallington, Surrey, SM6 0QH

- 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 Southeast Tree Care Limited for both full and partial awards of costs against the Council of the London Borough of Sutton.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a material change of use of the site to a waste operation and gym, and associated operational development.
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Decision

1. The application for an award of costs is allowed in part 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 PPG advises that effective enforcement action relies on accurate information about an alleged breach of planning control¹. In that interest, the Council served a Planning Contravention Notice (PCN) on the applicant. However, I heard at the Inquiry that it did not specifically identify the land for which it sought information. This was not contested by the Council.
4. A response to the PCN provided on behalf of the applicant did not refer directly to Southeast Tree Care's arboricultural business, however, the plan provided by the applicant identified only the land primarily used for waste operations. In serving a notice on a wider area of land, it was for the Council to be clear on the uses taking place there.
5. There were references from the applicant to arisings from 'waste products from arboricultural works' and 'forestry work, woodland management or tree surgery and other similar arboricultural operations' in the PCN and a pre-application enquiry relating to the site. The Council's early research showed that Ashley Sessford's occupation was 'ground/tree work', as a director of Southeast Tree Care Ltd.²

¹ Paragraph: 014 Reference ID: 17b-014-20140306

² Appendix 9 of the Enforcement Notice Report

6. Furthermore, albeit without explicit description, there were references to mixed or composite use of the land by the applicant alongside clear claims that the Notice failed to reflect the actual uses taking place on the site on the submission of the appeal. Although the Council could be forgiven for confusing this with the waste and gym uses, the applicant's appeal statement made it sufficiently clear that it was referring to a tree surgery/urban forestry contractors use taking place on the land to the rear of 268 Woodcote Road.
7. In my pre-Case Management Conference (CMC) note, I raised concerns over the Notice with reference to relevant caselaw and whether, amongst other things, an arboricultural business was taking place as part of a mixed-use. I also highlighted that the applicant's claims in respect of the Notice appeared to amount to a hidden ground (b). In that instance, the Council should have been alert to concerns with the Notice and sought to ensure its case going forward was on firm ground.
8. Although a follow-up letter from the applicant's representative of 24 June 2024 again omitted direct reference to the tree surgery business, it did re-emphasise that the Notice failed to properly reflect the mixed or composite uses taking place on the Land.
9. From the representations made at the Inquiry, it seems that the Council's approach to the arboricultural use was largely frustrated by the stance that the use of the site in conjunction with off-site arboricultural activity was either agriculture/forestry, or incidental to the remote use. It did not consider it a primary use of the Land nor, therefore, as contributing to a mixed use on the site.
10. However, it would have been prudent for the Council to review its position following the CMC. Despite those prompts, it seems to me that the Council failed to fully engage with the substance of those concerns in the run-up to the Inquiry. The Council's Final Comments, received 8 July 2024, were largely silent on the matters.
11. Furthermore, the Council's Proof of Evidence (PoE) of 10 September 2024, included an updated review of Companies House describing the applicant's business at the address as 'Silviculture and other forestry activities' (dated 5 September 2024). Even if this was regarded as agriculture/forestry, it would require reference in the allegation on a mixed-use site. The Council's reference to a 'mixed general industrial, storage use and gym' (para.7.30 of PoE) did not assist its case, and the PoE ultimately acknowledges a 'tree surgery/ urban forestry contractors use' (para.8.9).
12. If, as submitted to the Inquiry in the Council's opening, the Council was clear that the Notice could not be corrected to include a greater breach (by inclusion of the tree care business) without injustice, and was unsure as to the status of that business or how it related to other uses taking place on the site, then it was open to them to seek advice on the matter well in advance of the Inquiry. I find the failure to do so in the light of the preceding information and prompt at the CMC was unreasonable behaviour and has resulted in unnecessary or wasted expense in the appeal since that time. A partial award of costs is therefore warranted.

Costs Order

13. 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 the Council of the London Borough of Sutton shall pay to Southeast Tree Care Ltd., the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred since 2 July 2024, being the date on which the parties were asked to review their cases with respect to a confirmed hidden ground (b) appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to the Council of the London Borough of Sutton, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Hitchcock

INSPECTOR