



The Planning Inspectorate

Costs & Decisions Team

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Your Ref:

Our Ref: APP/E3335/C/23/3333243

Date: 17 December 2024

BY EMAIL ONLY

Dear Mrs Sutherland

Local Government Act 1972 - Section 250(5)

Town and Country Planning Act 1990

Appeal by Mr Tony Harvey

Site Address: Land West of Winters Hill Lane, West Compton, BA4 4PA

APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Housing, Communities and Local Government to decide your application for an award of costs, on behalf of the appellant, made on 16 October 2024 against Somerset Council ("the Council"). The appeal, made on 15 November 2023, was against an enforcement notice ("EN") issued by the Council on 12 October 2023. The breach of planning control stated in the EN is without planning permission and within the last four years operational development consisting of:-
 - i) the erection of a steel framed and glass/cement board clad building (photograph attached to the notice);
 - ii) associated ground works to create hardstanding,
 - iii) erection of a wooden stable building (foreground in photograph attached to the notice).

DECISION

2. The application is allowed in the terms set out below.

REASONS

3. The Planning Practice Guidance 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. Local planning authorities may take enforcement action when they regard it as expedient, but they are expected to exercise care when deciding to issue an EN. The PPG warns that local planning authorities 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 EN in the first place or ensure that it was accurate.
4. In his decision of 16 October 2024 the Inspector found, for the reasons given, that the EN was fundamentally flawed as it was hopelessly ambiguous and uncertain. The EN was a nullity and it could not therefore be corrected. The Inspector went on to conclude that the Council should have been alert to the deficiencies in the EN and could have considered withdrawing it and serving a new one under the second-bite provisions.

5. In responding to the costs application the Council refers to the planning merits of the appeal and a retrospective planning application made by the appellant for a local person dwelling but such matters are not relevant to the Secretary of State's consideration of this costs application. While the Council accepts that the EN had shortcomings, it contends that a full award of costs against it is not justified.
6. The Secretary of State disagrees. The Council acted unreasonably in issuing the EN worded as it was. As a consequence of the Council serving a fatally flawed EN the appellant's grounds of appeal were not considered. As a result the appellant incurred wasted expense in the appeal process.
7. As to the extent of the award, at the time of this costs decision no new EN has been issued and appealed. It would therefore seem that none of the work undertaken in this appeal is re-usable in any further EN appeal. A full award of the appellant's appeal costs will therefore be made.
8. The appellant considers that the Inspector's decision "*duck(ed)*" the issues raised in his appeal case by considering the EN a nullity which was not pleaded by either party. However, the Inspector made clear in his decision that as the EN is a nullity the appeal grounds do not fall to be considered.

COSTS ORDER

9. Accordingly, the Secretary of State for Housing, Communities and Local Government, in exercise of her 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 her in that behalf, HEREBY ORDERS that Somerset Council shall pay to Mr Tony Harvey his costs of the enforcement appeal proceedings before the Secretary of State as described in paragraph 1 of this letter, such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. You are now invited to submit, on behalf of the appellant, details of those costs to Somerset Council with a view to reaching an agreement on the amount.
11. A copy of this letter has been sent to Somerset Council.

Yours sincerely

Richard Holland

Authorised by the Secretary of State to sign in that behalf