



Costs Decisions

Inquiry Held on 3, 4 and 12 December 2024

Site visit made on 4 December 2024

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th January 2025

Costs application A in relation to Appeal Ref: APP/Q3630/C/23/3317083 Land to the rear of Acorn Farm, Village Road, Thorpe, EGHAM, TW20 8UG

- 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 Mr John Doherty for a full award of costs against Runnymede Borough Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the unauthorised material change of use of the land to a caravan site including the siting of caravans and mobile homes for residential use.
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Costs application B in relation to Appeal Ref: APP/Q3630/C/23/3317083 Land to the rear of Acorn Farm, Village Road, Thorpe, EGHAM, TW20 8UG

- 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 Runnymede Borough Council for a partial award of costs against Mr John Doherty.
 - The inquiry was in connection with an appeal against an enforcement notice alleging the unauthorised material change of use of the land to a caravan site including the siting of caravans and mobile homes for residential use.
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Decisions

Application A

1. The application for an award of costs is refused.

Application B

2. The application for an award of costs is refused.

Application A

The submissions for Mr John Doherty

3. In summary, the appellant is seeking a full award of costs, in circumstances where the Council should have withdrawn their notice at an earlier stage, thus avoiding the need for the Inquiry. Alternatively, a partial award of costs if the notice is quashed pursuant to the ground (b) appeal. It is the appellant's case that the Council could also have suggested their amendments to the notice at an earlier stage, giving them time to address the proposed changes.

4. They submit that the Council failed to carry out a diligent investigation to ensure that the notice was accurate. The principles of assessing the correct planning unit were not applied and they then failed to promptly review their case once this was raised and prior to the Inquiry. The above factors have resulted in wasted costs for the appellant.

The response by Runnymede Borough Council

5. The crux of the Council's response is that, firstly, their substantive disagreement with the appellant's case is not unreasonable. Secondly there was a failure of the appellant to engage with the Council and any subsequent ambiguity was caused by the appellant's own actions.
6. They dispute that they have misapplied the tests for determining the correct planning unit and the disagreement on the application of these tests in respect of the facts are a normal part of a planning appeal.

Application B

The submissions for Runnymede Borough Council

7. The Council is seeking a partial award of costs against the appellant, for seeking to take advantage of his failure to co-operate with the enforcement process and failure to respond to the Planning Contravention Notice (PCN) that they served.
8. They contend that this lack of engagement, has resulted in the notice being issued in its current form. This has then caused the Council to incur unnecessary costs.

The response for Mr John Doherty

9. The appellant submits that he provided the Council with details of those residing in the caravans and he denies a lack of co-operation with the Councils' officers. It is their case that they are only able to address the notice as it has been issued. The allegation of intensification was not part of the allegation and the Council's position on this was opaque and became even less clear at the Inquiry.

Reasons

10. Parties in planning appeals and other planning proceedings are normally expected to meet their own expenses. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Application A

11. It will be seen from my substantive decision that I do not agree with the Council that Acorn Farm comprises more than one planning unit. In their oral evidence the Council pointed to a lack of co-operation from the appellant in refusing the investigating officers access to the site prior to the issue of the notice. It is of note that they served a PCN to elicit further information, however, this was not completed by the appellant. It is not clear why the Council did not exercise their rights of entry, or seek a warrant to enter the

site, other than their own legal advice was that a warrant would be unlikely to be forthcoming if applied for.

12. I acknowledge that the issue of the notice with no site inspection to verify and establish the facts on the ground, together with an unanswered PCN, was perhaps unwise.
13. I also accept that the Council could have reviewed their position and if necessary, withdrawn the notice when the matter of the planning unit was raised in the evidence and following the CMC. However, I cannot speculate whether the Council would have come to a different view on the planning unit, had they inspected the site. Differences over the identification of planning units are not uncommon at appeals. Moreover, even though I do not agree with the Council's findings, at the Inquiry and through their evidence, the Council defended their position, providing witnesses, a number of photographs, officer reports and other documents.
14. Accordingly, I do not consider that their behaviour in issuing the notice or during the appeal process, amounted to unreasonable behaviour, in these particular circumstances.

Application B

15. The application from the Council relates largely to their perspective on the same matters that I have already set out above and I do not intend to repeat here.
16. There appears to have been a complete breakdown in communication between the parties in the time before the notice was issued. I accept that there is potentially some culpability from the appellant in refusing Officers access to the appeal site and failing to respond to the PCN. However, it is still germane that the Council, for whatever reason, chose not to pursue their rights of entry to establish the facts and to assess the correct planning unit and breach of planning control.
17. For these reasons, I am not satisfied that unreasonable behaviour leading to wasted costs has been demonstrated by the appellant.

Conclusions

18. On the basis of the evidence before me, I consider that both parties must bear some responsibility for the sequence of events that led up to the issue of this defective notice. However, I do not consider that either party has demonstrated unreasonable behaviour such that it alone, has directly resulted in unnecessary or wasted expense for the other party in the appeal process.

Application A

19. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated in this instance. Accordingly, I refuse the application for an award of costs against the Council.

Application B

20. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated in this instance. Accordingly, I refuse the application for an award of costs against Mr John Doherty.

Hilary Orr

INSPECTOR