

Costs Decisions

Hearing held on 8 & 14 November 2024

Site visit made on 8 November 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2025

Costs application in relation to Appeal A Ref: APP/B3030/C/24/3337615

- 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 ROBERT COLLINGHAM (COMBS FARM) LIMITED for a full award of costs against Newark & Sherwood District Council.
- The appeal was against an enforcement notice alleging the erection of a building.

Land known as Mill Farm, Gonalston Lane, Hoveringham NG14 7JJ

Costs application in relation to Appeal C Ref: APP/B3030/C/24/3337637

- 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 ROBERT COLLINGHAM (COMBS FARM) LIMITED for a full award of costs against Newark & Sherwood District Council.
- The appeal was against an enforcement notice alleging the laying of hard core/crushed stone to create new access tracks and pedestrian paths.

Land known as Mill Farm, Gonalston Lane, Hoveringham NG14 7JJ

Costs application in relation to Appeal D Ref: APP/B3030/C/24/3337638

- 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 ROBERT COLLINGHAM (COMBS FARM) LIMITED for a full award of costs against Newark & Sherwood District Council.
- The appeal was against an enforcement notice alleging the material change of use of land and buildings from agricultural use to use for the holding of weddings and events.

Land known as Mill Farm, Gonalston Lane, Hoveringham NG14 7JJ

Decisions: Costs applications in relation to Appeals A, C and D

1. The applications for an award of costs are allowed in the terms set out below.

Procedural Matters

2. The applicant submitted an application for costs in respect of appeal reference APP/B3030/C/24/3337615 (Appeal A), APP/B3030/C/24/3337636 (Appeal B), APP/B3030/C/24/3337637 (Appeal C) and APP/B3030/C/24/3337638 (Appeal D) in writing for a partial award of costs. However, during the hearing, the applicant confirmed it is actually seeking a full award of costs in respect of appeals A, C and D and no award of costs is sought for Appeal B. The Council was given the opportunity to consider and respond to this during the hearing and I have therefore considered the applications on this basis.

Reasons

3. 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. The term “unreasonable” is used in its ordinary meaning as established by the Courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.
4. The PPG advises that local planning authorities must carry out adequate prior investigation. Local planning authorities have a general discretion to take enforcement action when they regard it as expedient, however, they are expected to exercise care when deciding to issue an enforcement notice. 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.
5. With respect to the appeals, the Council acknowledges the errors in drafting the enforcement notices. Nevertheless, it maintains the reasons for issuing the notices are justified and could result in further proceedings.
6. However, with respect to Appeal A, the Council has drafted an enforcement notice which fails to comply with the requirements of section 173(9) of the Act, contrary to well-established case law and, as set out in my decision letter, I have found the notice to be a nullity. Whether or not the Council decides to re-issue the enforcement notice, this has resulted in the applicant incurring wasted expense in appealing the enforcement notice. As such, a full award of costs is justified in respect of Appeal A.
7. With respect to Appeal C, although not a nullity, I have found the notice is invalid beyond correction and should be quashed. Had the Council taken more care when drafting the notice, it could have ensured it was accurate. This has resulted in the applicant incurring wasted expense in appealing the enforcement notice and, as such a full award of costs is justified in respect of Appeal C.
8. With respect to Appeal D, I have found the notice is invalid beyond correction and should be quashed. The Council does not appear to have considered whether the appeal site was in a mixed use. It is clear from the Council’s statement that it is aware agricultural and residential uses are occurring within the appeal site. However, these are not included in the allegation and no reference to a mixed use is made in the allegation.
9. The Council suggests that the ‘erroneous issues’ with the enforcement notice are the result of a highly complex case. However, it seems more likely to me that the issues have arisen because the Council has not put its mind to whether the appeal site is in a mixed use. The applicant has responded to a planning contravention notice in respect of the site and has also submitted two planning applications in respect of part of the site for the wedding and events use. This is therefore not a case where the applicant has been uncooperative or sought to provide limited information in respect of the site.
10. The Council’s failure to consider whether the site is in a mixed use is unreasonable and has resulted in an allegation which is incorrect and the quashing of the notice.

Had the Council considered this matter properly, it is likely it would have drafted the enforcement notice to allege a mixed use. This would have ensured that the notice was accurate. Although the applicant does not dispute that a breach has occurred, it has incurred wasted costs in submitting and defending the appeal. As such, a full award of costs is justified in respect of Appeal D.

Costs Order

11. 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 Newark & Sherwood District Council shall pay to ROBERT COLLINGHAM (COMBS FARM) LIMITED, the costs of the appeal proceedings described in the headings of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned enforcement appeals reference APP/B3030/C/24/3337615, APP/B3030/C/24/3337637 and APP/B3030/C/24/3337638.
12. The applicant is now invited to submit to Newark & Sherwood 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.

M Savage

INSPECTOR