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Helen Morris
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Your Ref:

Our Ref: APP/Q3630/C/24/3341998

Date: 9 April 2025

BY EMAIL ONLY

Dear Madam

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 174 AND 322
LAND AT WALNUT TREE FARM AND LITTLE ALMNERS CARAVAN PARK,
ALMNERS ROAD, LYNE, CHERTSEY, KT10 0BH
APPEAL BY MR MILES CASH: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Housing, Communities and Local Government to refer to the Planning Inspector's decision dated 19 December 2024 concerning the appeal by Mr Miles Cash. It was against an enforcement notice issued by Runnymede Borough Council on 5 February 2024. The notice alleged a breach of planning control on land described above by:

"Without planning permission, the material change of use of the Land as a mixed use consisting of a permanent residential caravan park for gypsies-and-travellers and non-gypsies-and-travellers, a Long & Short Term Caravan, Motor Home Camping Park, a traffic management contractor's yard and storage of shipping containers, lorry bodies and caravans. And all the associated development facilitating the material change of use which includes:

- i) The erection of fencing, walls and means of enclosure on the Land;*
- ii) The erection of assorted site offices on the Land;*
- iii) The creation of hard surfaces*
- iv) The erection of brick bases for caravans*
- v) The erection of sheds"*

2. The appeal was made on grounds (a), (b), (c), (d), (e), (f) and (g) in section 174(2) of the Town and Country Planning Act 1990 (as amended). However, ground (e)¹ was dealt with by the appointed Planning Inspector as a discrete topic, on the basis that there would be no point in hearing evidence on all other grounds, or from witnesses of fact, if ground (e) were to succeed. In the event the other grounds were not considered by the Planning Inspector because, as stated in his appeal decision, ground (e) succeeded and the enforcement notice was subsequently quashed.

¹ The notice was not properly served on everyone with an interest in the land.

3. This letter deals with your application, on behalf of the appellant, for an award of costs against the Council made in representations dated 3 January and 27 January 2025. The Council replied on 17 January 2025. As these costs submissions have been made available to the parties it is not proposed to summarise them.

Summary of decision

4. The costs application succeeds and a full award of costs is being made. The formal decision and costs order are set out in paragraphs 14 and 15 below.

Basis for determining the costs application

5. In enforcement notice appeals the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense.

6. The application for costs has been considered in the light of the relevant guidance in the Government's Planning Practice Guidance (PPG), the appeal decision, the appeal papers, the written costs correspondence and all the relevant circumstances.

Reasons for the decision

7. All the available evidence has been carefully considered. Particular regard has been paid to the guidance at 048 of the PPG. The costs application is on the basis that the Council acted unreasonably by failing to properly serve the enforcement notice on every owner and/ or occupier of and/or person with an interest in the land contrary to their statutory duty.

8. In commenting on the costs application, the Council argued that their prior investigation of both the breach of planning control and who to serve the notice upon was adequate, given the context of the complex nature of the site, its ownership, any occupiers and any persons with an interest in the land. A detailed site visit was carried out by the Council and ownership of the appeal land investigated before the notice was served. It was contended that any errors in service of the notice, while regrettable, did not amount to unreasonable behaviour. However, the Inspector's subsequent decision with regard to ground (e) clearly concluded that the notice had not been properly served by the Council. In particular, paragraph 42 of the Inspector's appeal decision stated:

"I am not satisfied that everything that could have been done to serve the notice on every owner and/or occupier of and/or a person having an interest in the land was done by the Council. I have identified that owners, occupiers and persons having an interest in the land have been substantially prejudiced."

The appeal on ground (e) was allowed by the Inspector and the enforcement notice was quashed.

Conclusions

9. The Secretary of State notes that in this case your client's application for costs was made after the Inspector's appeal decision was issued. You have cited the outcome of the appeal in support of the costs application. Although a decision on a costs application does not follow directly from the result of the appeal itself the Secretary of State has taken into account as a material consideration the basis on which the enforcement notice was quashed on appeal.

10. The onus was on the Council to ensure that they served the enforcement notice on all parties with an interest in the land. The view is taken that it was the Council's responsibility to exercise sufficient care and undertake adequate investigation before issuing/serving the enforcement notice.

11. Having considered the available evidence, and having particular regard to the Inspector's reasoning (in his appeal decision) to support the conclusion that the notice be quashed, the Secretary of State finds it difficult to escape the conclusion that the Council acted unreasonably by not clearly complying with the statutory requirements of section 172(2) of the 1990 Act (as amended). The practical consequence of the Council's errors in failing to serve the notice on all owners, occupiers and other relevant persons with an interest in the land was that the ground (e) appeal succeeded, the enforcement notice was quashed, and the appellant's other grounds of appeal were not considered. As a result the appellant incurred wasted expense in the appeal process. An award of costs is therefore considered justified.

12. As to the extent of the award, there is no information to indicate that another enforcement notice has been issued which (in the event of a further appeal) might suggest that the appellant's expense could, to some extent, be re-usable. A full award of the appellant's appeal costs is therefore considered justified.

13. For the avoidance of doubt the Secretary of State does not decide the amount of costs payable. This is for the parties' agreement or, failing that, via an application for detailed assessment in the Senior Courts Costs Office.

FORMAL DECISION

14. For these reasons, the Secretary of State has decided that a full award of costs, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

COSTS ORDER

15. 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 Runnymede Borough Council shall pay to Mr Miles Cash his costs of the enforcement appeal proceedings before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 1 of this letter.

16. You are now invited to submit, on behalf of the appellant, details of those costs to Runnymede Borough Council with a view to reaching an agreement on the amount. A copy of this letter has been sent to them.

Yours faithfully

S Parsons

STEVE PARSONS
Authorised by the Secretary of State
to sign in that behalf