
Costs Decision

Site visit made on 3 April 2025

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 April 2025

Costs application in relation to Appeal Ref: APP/F0935/C/24/3354161

- 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 Mr Daniel Graham for a full award of costs against Cumberland Council.
- The appeal was against an enforcement notice alleging the material change of use of the land from use for equestrian to a mixed use of residential and storage.

Land at South East of Rattlingate Cottage, Kirkandrews on Eden, Carlisle CA5 6DW also known as Millbeck Stables, Grinsdale Bridge, Burgh by Sands, Carlisle CA5 6DP

Decision

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

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 applicant considers the absence of prior communication from the respondent (the Council), the way in which it served the notice, and imprecision regarding the storage element of the alleged mixed use to be interrelated. No evidence of unnecessary or wasted expense arising from the way the notice was served has been identified and therefore this aspect cannot warrant an award of costs.
4. The respondent points out that it served a planning contravention notice in July 2022 to gather evidence from the applicant. It also states that when an officer visited the site in November 2021, the applicant told them he was not living there, contrary to his later statement in the appeal that he had done so since October 2016. The applicant does not deny he said this, and it is therefore questionable whether greater engagement would have succeeded in establishing facts that would have averted the notice being issued.
5. In any event, as recorded in the Main Decision, there had been a material change of use through the introduction of the alleged residential and storage uses, confirming the respondent's assessment of the situation on the ground. The notice gave little detail of the nature of the alleged storage use and the respondent did not act on the applicant's request for clarification on this. Nevertheless, the respondent identified an unauthorised storage use in its statement of case and this revealed nothing that had been unknown to the applicant. His criticism of the failure to provide the requested clarification at that early stage is justified but the facts do not

suggest that a timely response would have resulted in the notice being withdrawn. The expense incurred in the appeal was therefore not unnecessary or wasted.

6. Based on the evidence of the storage use set out in the respondent's statement of case, I have no reason to believe that the suggested review of its case would have resulted in a different outcome. It was therefore not unreasonable that the respondent did not review its case.
7. I note the applicant's concern about a statement in the officer report on application 23/0752, that the respondent was taking enforcement action against the use of the site as a scrap yard. Regardless of whether that statement was correct, the notice does not allege use as a scrap yard, so the point is immaterial to the appeal and the applicant is responsible for any expense he may have incurred on it.
8. It is reasonable to assume that the case the applicant would have made, had there been time to make a revised application for a certificate of lawful existing use or development (LDC), is the same as he made in the appeal on ground (d). There is no evidence that greater expense was incurred in appealing that ground than would have been incurred by means of the intended LDC application. Accordingly, it has not been shown that wasted or unnecessary expense was incurred in this respect.
9. The case commonly known as *Woolley Chickens*¹ may have limited relevance to a caravan but it is relevant to whether something is a building, which the applicant claimed. It was therefore not unreasonable for the respondent to refer to it. Neither party provided me with a copy of the Newham Turn Farm appeal² so I can only rely on the extracts they have quoted. The Inspector in that case had not been provided with a structural report but it does not follow that the submission of such a report will lead to a different outcome. For the reasons given in the Main Decision, it did not do so in this case.
10. While the respondent has not produced objective analysis or professional advice in support of its view that the caravan is capable of being moved, the onus to demonstrate otherwise rests with an appellant in an appeal on ground (b). In view of my finding on this matter in the Main Decision, I see no reason why the respondent should have withdrawn the notice.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Mark Harbottle

INSPECTOR

¹ *R (oao Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin).

² APP/Y2810/X/21/3276597.