The Planning Inspectorate

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Your Ref:

Our Ref: APP/D0121/W/24/3345638
APP/D0121/W/24/3345649

Date: 30 April 2025

Dear Madam

LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)
TOWN & COUNTRY PLANNING ACT 1990 – SECTIONS 78 & 322
BARN A, B AND C KINGCOTT FARM, BEGGAR BUSH LANE, ABBOTS LEIGH, BS8 3TF: APPEALS BY JOHN AND ROBERT ATHERTON: 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 of 9 December 2024 concerning the above appeals. The appeals are summarised as follows:

3345638 (Appeal A): Appeal against the decision dated 14 March 2024 by North Somerset Council to refuse to grant prior approval for the change of use of Barn B into 1no. dwelling and Barn C into 4no. dwellings, with operational development including enclosing the open sides of the barn with brickwork & cladding and adding new openings to create windows & doors, on land described above (LPA ref: 24/P/0213/CQA).

3345649 (Appeal B): Appeal against the decision dated 13 March 2024 by North Somerset Council to refuse to grant prior approval for the change of use of 1no. existing barn into office accommodation (Use Class E), on land described above (LPA ref: 24/P/0111/CRA).

2. This letter deals with the Council's late application for a partial award of costs against the appellants.[1] The application was made in correspondence dated 15 November 2024. The appellants replied on 19 December 2024. As these representations have been fully disclosed to the parties, it is not proposed to summarise them. They have been carefully considered.

[1] The Planning Inspectorate's letter of 10 December 2024 explained to the parties that, in the relevant circumstances, the Secretary of State had exercised discretion to accept the late application for consideration.

Summary of decision

3. The formal decision is set out in paragraph 13 below. The costs application fails and no award of costs is being made against the appellants.

Basis for dealing with the costs application

4. In planning and enforcement 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.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party, irrespective of procedural method, where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered by reference to the Government's Planning Practice Guidance (PPG) on awards of costs (as published on the Gov.uk website under "Appeals"), the appeal papers, the correspondence on costs and all the relevant circumstances.

Background to the Decision

7. All the available evidence has been carefully considered. The decisive issue is whether or not the appellants acted unreasonably, with the result that the Council was put to unnecessary expense, by submitting evidence at a late stage in the appeal proceedings.

8. Paragraph 052 of the PPG outlines examples of unreasonable behaviour by an appellant which may result in an award of costs. This includes introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.

9. Both appeals were submitted on 4 June 2024. The Inspectorate's 'start' letter, issued on 29 July 2024, confirmed the appeals would proceed jointly by way of written representations and set out the timetable for submission of documents. On 7 November 2024 the appointed Inspector asked to case officer to contact the appellants to request 'clarification as to the size and location of the agricultural unit'. The appellants' response was received on 12 November. It included details of the site area of various portions of the agricultural unit together with an explanatory plan. Also included were some comments regarding a passing bay installed along the access road to the site. The appellants mention that given the overall size of the site, prior approval could have been sought for the passing bay. They also go on to point out that they consider the passing bay to be a minor installation and that it had been in active use before the appeal applications were submitted. They state that no correspondence had been received relating to enforcement action from the Council, and go on to re-iterate that the proposal should not be refused on highways grounds. The Council contended these were new arguments and requested they should be allowed to comment. The Inspector agreed to that request and also allowed final comments from the appellants. The Inspector subsequently issued the decision to dismiss both appeals on 9 December 2024. The Inspector also refused an application for an award of costs by the appellants against the Council on the same date.

Conclusions

10. Paragraph 052 of the PPG warns that unreasonable behaviour by an appellant which may result in an award of costs includes introducing fresh or substantial evidence at a late stage. The appellants contend that the comments regarding the passing bay in their email of 12 November do not amount to new arguments. The Secretary of State notes that reference to the passing bay being in use was mentioned in paras 3.18 and 3.21 of the appellants' statement of case. The appellants' final comments also make reference to the passing bay and that it was considered to be completed under agricultural permitted development (Part 6, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015), and they had not received any correspondence regarding any enforcement action. Furthermore, specific mention of the passing bay being used for farm traffic is contained within the appellants' final comments on their costs application dated 2 October 2024.

11. Notwithstanding the fact that the Inspector did not specifically request any comments regarding the passing bay, and that the LPA were given an opportunity to comment, the Secretary of State takes the view that the comments do not amount to 'fresh and substantial' new arguments as referenced in the PPG, given they appear to repeat many points already made. Whilst the Council chose to re-assess the evidence in light of these comments, the Secretary of State does not consider that this would be particularly onerous since they appear narrow in scope and repeated in earlier documentation.

12. For these reasons, the Secretary of State is not satisfied that the appellants have been shown to have acted unreasonably, causing the Council to incur wasted expense.

FORMAL DECISION

13. For these reasons the Secretary of State has decided that an award of costs on grounds of "unreasonable" behaviour resulting in unnecessary expense is not justified in the particular circumstances of this case. The Council's application for costs is therefore refused.

14. A copy of this decision is being sent to the appellants' agent, Miss Helen Ross of Grassroots Planning Ltd.

Yours faithfully

E. R. Humphrey

ELIZABETH HUMPHREY
Authorised by the Secretary of State
to sign in that behalf