The Planning Inspectorate

Costs Decision

Inquiry Held on 24, 25, 26, 27 June and 14 July 2025
Site visit made on 24 June 2025

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2025

Costs application in relation to Appeal Refs: APP/D3640/C/25/3361214, APP/D3640/C/25/3361215, APP/D3640/C/25/3361216, APP/D3640/C/25/3361218
Land at Hillings Nursery, Bagshot Road, Chobham, Woking, Surrey GU24 8DB

- 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 Bean Chapman of T. Hilling & Co. Limited, Mr Mark Gregory of Landform Consultants Limited, Mr Anthony Gallagher of Easigrass Distribution Limited and Mr Andrew Thorne of Andy Thorne Groundworks Ltd for a full award of costs against Surrey Heath Borough Council.
- The Inquiry was in connection with an appeal against an enforcement notice alleging a mixed use and the facilitative developments.

Decision

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

The submissions for the Applicant

2. The application is made as the Council has acted unreasonably in a procedural and substantive sense in issuing the enforcement notice and caused the appellants to incur wasted costs. For enforcement action, local planning authorities must carry out adequate prior investigation. Substantive awards may be given for reasons which include vague, generalised or inaccurate assertions about a proposals impact, which are unsupported by any objective analysis.

3. The issue of the enforcement notice and the Council's continued defence of it have caused wasted costs. These costs, which include dealing with all the grounds of appeal and planning in the southern part of the site are additional to the costs which would have been incurred in taking the LDC to appeal.

4. The Council acted unreasonably in issuing an enforcement notice which was a nullity or so flawed as to be incapable of being varied. In particular, it is not possible for the reader of the notice to understand what change would constitute an ending of the mixed use; what area of land is subject to the requirement to remove concrete hardstandings; which structure is required to be removed; and, what condition the land is to be restored to.

5. In the southern area, CAF has planning permission. The Council have granted a series of planning permissions. Previous notices did not include the southern

area. The Council's reversal of position is incoherent. It seems based on alleged departures from the permissions, without any articulation of how that bears on the implementation and lawful use under those permissions. The farm park is a distinctly different use and planning unit from the remainder of the site. It is unreasonable to contend otherwise.

6. The planning merits arguments were not supported by evidence. The Council failed to accept the grey belt status of the site and significant amount of previously developed land; they produced no evidence at all on public right of way safety, the nearby site of nature conservation interest or residential amenity; the highway case was based on car parking in the south-eastern part not existing, when that would be authorised by the appeal being allowed on ground (a); and, none of their reasons took into account a realistic baseline of what operational development and fallback uses would remain or could be reverted to.

7. The enforcement notice is grossly disproportionate and unreasonable. For several years, the Council has been concerned about certain aspects of development or activities on the site. Those specific issues have been turned into what appears (given the uncertainty in the notice) to be an attempt to shut down businesses directly employing nearly 200 people, which have been operating from the site for years, in the case of Landform, 15 years.

8. Even if there were some matters which raised issues of lawfulness or planning merits, it was not reasonable to issue an enforcement notice of such scope and impact, extending well beyond potential breaches of planning control. This was a sledgehammer to crack a nut, the Council being utterly heedless of the economic and social consequences, and the impact on those who work on the site.

9. The small elements raised by the Council in the Inquiry – the car wash, the telecoms mast, the south-eastern corner and the south-eastern building – do not render the issue of the notice reasonable. They were not matters raised in the decision to issue the notice; were not part of the Council's conclusions on the breach, the planning merits or expediency; are not matters which obviously justify the issue of an enforcement notice; and, are matters at the peripheries of the site which could not rationally justify the issue of this enforcement notice, and imperilling 200 jobs.

10. It was unreasonable for the Council to issue the enforcement notice. Issuing the notice has caused the appellants to incur wasted and unnecessary expense. The Council should be required to pay the costs of the enforcement notice appeal to the appellants.

The response for the Council

11. The notice is not a nullity. The unreasonable behaviour alleged appears to be limited to four points set out in the application. The Council was not unreasonable in issuing the notice with those requirements.

12. The Council has then set out in its case documents how and why the view has been reached as to whether the various permissions have been implemented or not. The Council has also set out in evidence as to how and why it has reached the conclusion that there is a single planning unit.

13. It is simply incorrect to assert that the Council failed to consider grey belt/PDL prior to the Inquiry. That the Council's witness did not agree is a different point and no complaint is made as to how those topics were treated.

14. On highway safety the Council was clear throughout and referred to an earlier appeal decision. Policy CP14A is then engaged in respect of the SNCI and it would be wrong to pretend that it was not. The Council also set out the objections made to planning applications by residents in the locality in respect of living conditions.

15. No realistic fallback position has then been set out by the appellants in their evidence.

16. No one has ever suggested that the notice is based solely on 'the small elements' comprising the car wash, the telecom mast, or the south-east building. It is wrong to characterise them as matters that have, on their own, been claimed to justify the issue of the notice. It does not matter that they do not feature on the face of the notice, nor whether or how they were discussed in the expediency report. The point is whether they are relevant to an issue in the appeal, and they plainly are relevant to the appeal, not least in relation to the main issue of whether there is a single planning unit or not. The application does not suggest that it was unreasonable to rely on these matters in conjunction with others because plainly it is not unreasonable to do so, and because the application is made on the basis that issue of the notice was unreasonable, not that the Council sought to justify the notice on the 'margins' points alone.

17. For the reasons set out above the Council submit that the costs application should fail. It is limited to the enforcement appeal and is made on the basis that the notice should never have been issued. While the appellant may feel aggrieved that the notice was issued and disagrees with the reasons why and the Council's analysis and evidence presented at appeal, it is clear that it was not unreasonable to issue the notice.

Inspector Reasons

18. The Planning Practice Guidance 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.

19. I did not find the notice to be a nullity or fatally flawed.

20. The inclusion of CAF was then inevitable given the Council's conclusion that there was one planning unit and the previous unsuccessful enforcement attempts. It was therefore not incoherent. Given my finding of two planning units was finely balanced, and that the implementation of permissions and the continued operation of CAF as a farm park was very finely balanced, the position of the Council cannot be regarded as an unreasonable one.

21. In respect of planning merits, the Council provided evidence on the points agreed as main issues. I am not persuaded that there were vague, generalised or inaccurate assertions as there was an evidential basis. The fallback position would then have been based upon the lawfulness of any remaining uses and structures, but this would have been limited if I had accepted the entirety of

the Council's case. The appellants also made little of a potential fallback position.

22. Even if the Council had not raised certain issues in the past, I do not accept that the notice was disproportionate because it did not unreasonably go beyond potential breaches of planning control. Matters pertaining to CAF were again finely or very finely balanced and I also did not accept the totality of the appellant's original claim of lawfulness on the northern land. It is common ground that there was no relevant planning permission on the northern land, and therefore the appellants would have to accept their responsibility of operating from the site and consequences should they have had to relocate or close.

23. I also do not accept that the notice was based upon small or marginal elements raised at the Inquiry. There were clearly significant matters that required assessment in the round, and the Inquiry provided the platform for that to take place.

Conclusion

24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Paul T Hocking

INSPECTOR