



Costs Decisions

Site visit made on 21 August 2025

by Sarah Dyer BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th September 2025

Costs application in relation to Appeal A Ref: APP/J0405/C/23/3322499

Plot 10, Sunset Park Homes, Whitfield Road, Brackley, NN13 5TD

- 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 Ambrose Smith for a full award of costs against Buckinghamshire Council - North Area (Aylesbury).
- The appeal was against an enforcement notice alleging failure to comply with a condition imposed on planning permission Ref: 08/01966/APP granted at appeal (Appeal Ref. APP/J0405/A/09/2097819) on 24 June 2009.

Costs application in relation to Appeal B Ref: APP/J0405/X/23/3320808

Plot 10, Sunset Park Homes, Whitfield Road, Biddlesden, Buckinghamshire NN13 5TD

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Ambrose Smith for a partial award of costs against Buckinghamshire Council - North Area (Aylesbury).
- The appeal was against the refusal of the Council to issue a certificate of lawful use or development for change of use of Stables Building into 3 no. separate residential units for a period in excess of 4 years.

Decisions

1. The applications for an award of costs are refused.

Background

2. Parties in planning appeals normally meet their own expenses. However, 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.
3. In this case the applicant considers that the Council has acted unreasonably because it has acted contrary to established case law and its decision was flawed, including on the basis that it sought to contrive a reason to refuse the application for the lawful development certificate (LDC).
4. The applicant has confirmed that the costs application in relation to Appeal B is in part only, and relates to the recovery of the costs associated with Counsel's advice on the Council's approach in respect of the application of Sections 171B(2) and S171B(3) of the Planning Act 1990 and case law, and part of the overall costs of pursuing the appeal to be determined following any decision to allow costs.

Reasons

5. The applicant points to the Council's reference to *FSS v Arun DC v Brown* [2006] EXCA Civ 1172; [2007] (the Arun Case). He considers that had the Council had proper regard to that judgement it would have concluded that the relevant immunity period should have been four years and not ten years.
6. It will be seen from my decision that I have concluded that the immunity period set out in the enforcement notice is correct because the allegation concerns a breach of condition which does not relate to the use of the building as a dwellinghouse. Thus the outcome of the Arun Case was not applicable to the facts of this case. In this respect I have also concluded in my decision that the Mayfield Appeal Decisions (Appeal Refs. APP/P1615/C/08/2075254 and APP/P1615/X/08/2072608, APP/P1615/X/2083871) are not directly comparable to this case.
7. The Council refers to the Arun Case in its Officer Report relating to the application for the LDC. However, the summary section of the report and specifically paragraph 8.2 makes it clear that the Council's opinion is that the breach of Condition 3 has an immunity period of ten years notwithstanding its reference to the Arun Case elsewhere in the report. This is reflected in its subsequent enforcement notice.
8. The applicant does not agree with the Council in respect of the relevance of the Arun Case and it was his choice to seek Counsel's opinion on this matter. As he points out, the Council also sought oversight of its Officer Report by Counsel, which was its prerogative. This does not amount to unreasonable behaviour by the Council. Furthermore there is no evidence to suggest that the Council went against its legal advice in its consideration of the relevance of the Arun Case.
9. I do not find that the Council went against established case law or acted unreasonably in respect of this point.
10. Plot 10 and the wider site has an extensive planning history but there is nothing in the evidence to suggest that the Council was doing anything other than following its own procedures and properly investigating a potential breach of planning control. It will be seen from my decision that I concur with the Council's decision to refuse the LDC was well- founded. It follows that for the reasons set out in my decision letter the Council's decision was not flawed.
11. The Council refers to 'the land on which the building is locate(d) and the wider site known as Plot 10' in its Officer Report. However, as noted in my decision the Council had regard for the occupation of either the building or the caravans, and this was appropriate given that the 2009 permission and the 2022 permission related to the same land. The reference to 'land' in the Officer Report does not indicate that the Council was seeking to interpret the approved plans or the planning permission in any other way than based on Plot 10 as a whole.
12. There is no evidence to indicate that the Council sought to contrive a reason to refuse the application for the lawful development certificate.
13. For the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted in relation to either costs application.

Sarah Dyer

INSPECTOR