



Costs Decision

Site visit made on 22 July 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 October 2025

Costs application in relation to Appeal Ref: APP/E3335/C/24/3337811

Land at Oak Tree Paddock, Whitemill Lane, Frome BA11 4EU

- 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 Ms Catherine Bell for a full award of costs against Somerset Council.
 - The appeal was against an enforcement notice alleging, in summary, a material change of use to a mixed use comprising agricultural, equestrian, and a residential use.
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

The submissions

2. The reasons given by the costs applicant (the appellant) for the costs application are summarised as follows:
 - The Council were unreasonable to issue the enforcement notice as the appellant had intended to cease the residential use and the only issue that remained between the parties was whether or not the yurt could remain on the land for agricultural purposes; and
 - As the notice is likely to be found invalid, the appellant has incurred unnecessary expense in making an appeal against it.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance on Appeals (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.

Were the Council unreasonable to take enforcement action?

4. I have concluded that the notice subject of the appeal is invalid and incapable of correction without injustice being caused. Notwithstanding this, on its face, the target of the notice is a residential use of the appeal site. There appears to be no dispute that a residential use of the land has occurred and that this has resulted in a breach of planning control.
5. I note the email correspondence from the appellant in which they state an intention to cease the residential use of the land. This is dated 16 November 2023, some two weeks prior to the issue of the notice. I also note that the appellant says that at the time the appeal was made, the residential use of the land had ceased.

Nevertheless, there is no suggestion that at the time the notice was issued the residential use had in fact ceased.

6. Section 172(1) of The Town and Country Planning Act 1990 as amended (the 1990 Act) informs that a local planning authority may issue a notice where it appears to them (a) that there has been a breach of planning control; and (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
7. Despite the defects in the notice, there appears to be no dispute that, at the time the notice was issued, there had been a breach of planning control. The notice also sets out sufficient reasons for the issue of the notice. Accordingly, the circumstances for the issue of a notice set out in section 172(1) of the 1990 Act were satisfied. Despite the intention of the appellant to cease the residential use, the Council were entitled to issue an enforcement notice under the provisions of section 172(1). Furthermore, having regard to those provisions, I cannot find the Council to have behaved unreasonably in doing so. I say this, mindful that the period for compliance with the notice reflected the period suggested by the appellant.
8. Notwithstanding the above, the appellant points to the focus of their appeal, which was not in relation to the residential use, but in relation to the retention of the yurt on the land. The appellant says that there was an intention to submit an application for planning permission to 'regularise that element'. They say that, for this reason, the appeal could have been avoided.
9. Whilst there may have been an intention to submit an application for planning permission, there is no indication that such an application had been submitted prior to the issue of the notice. The merits of whether or not the yurt should be retained for an alternative use were not, therefore, before the Council when it issued the notice.
10. The Council were clearly of the view that, at the time the notice was issued, the yurt remained on site in breach of planning control. I say this because the notice requires its removal. As I have quashed the notice, I have not considered whether or not the notice should require its removal. Nevertheless, as it had appeared to the Council that the yurt was on site in breach of planning control, I cannot find the Council to have behaved unreasonably in issuing an enforcement notice that required its removal.

Were the Council unreasonable to issue an invalid enforcement notice?

11. The advice at paragraph 048 of the PPG is of particular relevance. It states as follows:

'For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate'.

12. I have concluded that the notice is invalid, but not so defective as to have rendered it a nullity. Nevertheless, the Council were wrong to issue the enforcement notice that it has. Indeed, the Council has itself identified defects in the notice in its

- appeal statement. It is, therefore, apparent that, prior to the issue of the enforcement notice, the Council had not carried out a more diligent investigation that would have ensured that the notice was accurate.
13. Had the notice alleged a breach of condition, the appellant suggests that they would not have made an appeal on ground (a). I have been given no reason to dispute this. I am not, however, persuaded that a ground (f) appeal would have been avoided. Having regard to the requirements of the notice as drafted, the Council are clearly of the view that the yurt facilitates the residential use. Had the Council issued a notice alleging a breach of condition, I see no reason why it would have not required its removal. An appeal would not, therefore, have been avoided, had the Council issued a valid breach of condition enforcement notice.
 14. This does not, however, change that the notice contains substantial defects and that, as I have concluded in my appeal decision, the appellant would have approached his appeal in a different way, had the allegation in the notice been correct from the outset.
 15. All of the above considered, I can only conclude that the Council have behaved unreasonably in issuing an enforcement notice that is invalid. The appellant has, therefore, incurred unnecessary and wasted expense in the appeal process by making an appeal against this notice, which includes the fees paid for the ground (a) appeal.
 16. The appellant's costs application includes the cost of the fee for a planning application made to the local planning authority, which they say that the Council would not validate. I am not persuaded that this is of relevance to the matter of the Council's behaviour during this appeal process. I am unable to determine within the remit of this costs decision whether or not the Council were unreasonable to refuse to validate a planning application that was made outside of the appeal process, or to retain the fee for that application, as the costs application seems to suggest. The award of costs I make does not, therefore, include these expenses.
 17. To conclude, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has been demonstrated. Accordingly, a full award for costs is justified.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Somerset Council shall pay to Ms Catherine Bell, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Somerset Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

J Moss

INSPECTOR