



Costs Decisions

Inquiry Held on 15 September 2020

Site visit made on 22 July 2020

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9th October 2020

Costs application 1 in relation to Appeal Ref: APP/C3430/X/20/3248280 Former Munitions Depot, Lawn Lane, Coven

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Telford 6 Ltd for a full award of costs against South Staffordshire Council.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for *The storage of materials and goods, also the parking of transport and wagons. Vehicles include (but not limited to) a range and scale of commercial vehicles. Wagons include (but not limited to) a range of box trailers, curtain side trailers and flatbed trailers. These uses related to the site as a whole as they utilise the vehicular access from Lawn Lane, the extensive hardstandings located throughout the site and also the adjacent land within the curtilage of the site.*
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Costs application 2 in relation to Appeal Ref: APP/C3430/X/20/3248280 Former Munitions Depot, Lawn Lane, Coven

- The application is made under the Town and Country Planning Act 1990, sections 195, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by South Staffordshire Council for a full award of costs against Telford 6 Ltd.
 - The inquiry was in connection with an appeal against the refusal of a certificate of lawful use or development for *The storage of materials and goods, also the parking of transport and wagons. Vehicles include (but not limited to) a range and scale of commercial vehicles. Wagons include (but not limited to) a range of box trailers, curtain side trailers and flatbed trailers. These uses related to the site as a whole as they utilise the vehicular access from Lawn Lane, the extensive hardstandings located throughout the site and also the adjacent land within the curtilage of the site.*
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Decision 1 on costs application 1

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

Decision 2 on costs application 2

2. The application for an award of costs is allowed in part.

Reasons

3. An award of costs may be made where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

Decision 1 Reasons

4. Whilst the appellant submits that the Council acted unreasonably in proceeding to determine the application after the appellant appealed, for the reasons given in paragraphs 4 to 8 of the substantive decision, the appellant did not make a valid application until 12 February 2020 and therefore the Council, in issuing its refusal notice on 8 April 2020, did so properly and in time.
5. There is nothing before me that demonstrates that the Council failed to engage with the appeal process or set out its case. The change of procedure to an inquiry was necessary because there was conflicting factual evidence that required testing on oath. The appellant requested this change. The change had nothing to do with the Council's behaviour.
6. Although the appellant complains that the Council took into account representations made by interested parties, which had not been disclosed to the appellant, the Council's officer when giving evidence on oath said that these consultation responses were uploaded to the Council's planning portal as soon as they were received. Whilst this was after the appellant appealed, it was before the time for determining the application had expired. I accept the Council's position.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Decision 2 Reasons

8. The Council submits that the appellant has been procedurally unreasonable on two counts.
9. The first, by making an appeal before the time for determining the application had expired. Whilst it is correct that the appellant appealed too soon, it has not been demonstrated how this has caused the Council additional expense, as the appellant would have appealed the Refusal Notice in any event.
10. The second relates to the appellant's withdrawal of Mr Hommers' witness statement and statutory declaration without warning on the morning of the inquiry. There was no justifiable reason given for delaying the withdrawal of this evidence to such a late stage, and clearly the Council had by then already prepared its case against that evidence. I find that this was unreasonable behaviour on the part of the appellant which caused the Council unnecessary expense.
11. The Council also argues substantive unreasonableness in that the appellant had no reasonable prospect of success. However, whilst the appellant's evidence was weak, it did make out an arguable case. Consequently, this ground fails.

Decision 2 Costs Order

12. 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 Telford 6 Ltd shall pay to South Staffordshire Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs

incurred in dealing with the evidence of the appellant's witness Mr Hommers; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Telford 6 Ltd, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth C Ord

Inspector