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## Costs Decisions

Site visit made on 25 January 2021

**by Paul T Hocking BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 March 2021**

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### **Costs Application (A) in relation to Appeal Ref: APP/L1765/C/20/3256531 Land at Dradfield Lane, Soberton, Hampshire**

- 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 Nicholas Butler for a full award of costs against Winchester City Council.
  - The appeal was against an enforcement notice alleging: Without planning permission: i) the material change of use of the Land from agriculture to use for the storage/parking of trailer units(s)/mobile unit(s) and vehicles, and the siting of containers/trailer units for the storage of items that are not associated with the lawful use of the Land for agriculture; and ii) the construction of a hardstanding and drainage runs/pipes associated with the material change of use of the Land.
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### **Costs Application (B) in relation to Appeal Ref: APP/L1765/W/20/3263363 Southfield Nursery, Dradfield Lane, Soberton SO32 3QD**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr N Butler for a partial award of costs against Winchester City Council.
  - The appeal was against the refusal of planning for an improved site access with new 2.05m high timber entrance gates, 1.8m high close boarded support and associated hardstanding and works.
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#### **Application (A) Decision**

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

#### **Application (B) Decision**

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

#### **Reasons**

3. 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.
4. The first application is for a full award of costs as the appellant contends the Council served an enforcement notice without attempting to properly establish the relevant facts. A Planning Contravention Notice (PCN) could have established the facts. The failure to apply its enforcement powers proportionately has resulted in an unnecessary appeal with the appellant

- incurring the time and cost associated with the preparation and submission of the appeal in response to the notice served.
5. The Council highlights that it did visit the site and had served a Temporary Stop Notice (TSN). There is no legal requirement to serve a PCN to establish facts, in particular, when the appellant stated he will continue to carry out works and intends to live at the site. There has also been correspondence on numerous occasions between the Council and the appellant.
  6. The Council has therefore reacted to complaints about activities at the site. The service of a TSN may well have been valuable given the evidence about the appellant's intentions for residential occupation. The enforcement notice that followed therefore did not relate to a residential use but was drafted in such a way that it sought to pre-empt other breaches of planning control, given its reference to multiple unit(s) and storage/parking and siting uses.
  7. However, there was only a single articulated lorry trailer and storage container present and there has been evidence adduced to demonstrate on the balance of probabilities that they were in agricultural use. It therefore followed that the alleged material change of use had not occurred as a matter of fact.
  8. Whilst a planning application was subsequently submitted, it did not relate to the alleged change of use, given the appellant maintained that there had not been one.
  9. Accordingly, the Council acted unreasonably in taking enforcement action against the breaches of planning control that it had alleged, and the appellant incurred wasted expense in having to pursue an unnecessary appeal.
  10. The second application is for a partial award of costs and relates to the inclusion of the second refusal reason: ecology. The appellant highlights that paragraph 54 of the National Planning Policy Framework states that 'Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions...'. It is contended that the Council lacked reasonable planning judgement in the inclusion of the second refusal reason and did not act proportionately.
  11. However, part of the hedgerow had been removed, and the subsequent negotiation with the Council's Ecologist resulted in agreement being reached for a mitigation strategy following the refusal of the application. It was therefore an appropriate planning judgement for the Council to raise the matter as a refusal reason given the "important" status of the hedgerow under the Hedgerow Regulations 1997. This then resulted in a timely agreement between the parties, which meant the matter could then have been dealt with by planning conditions, had I been minded to allow that appeal.

## **Conclusions**

### **Application (A)**

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated.

**Application (B)**

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

**Costs Order**

14. 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 Winchester City Council shall pay to Mr Nicholas Butler the costs of the appeal proceedings described in the heading (A) of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Winchester City 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.

*Paul T Hocking*

INSPECTOR