



Costs Decision

Inquiry held on 8 February and 12 June 2012

Site visit made on 7 February 2012

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 25 July 2012

**Costs application in relation to Appeal Ref: APP/R3325/C/11/2162410
Land at Wagg Meadow Farm, Wagg Drove, Huish Episcopi, Somerset, TA10
9ER**

- 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 South Somerset District Council for a partial award of costs against Mr S B Davis.
 - The inquiry was in connection with an appeal against an enforcement notice alleging without planning permission;
 - a. the carrying out of operational development (being building and/or other operations) on the land, namely the erection of a building to be used as a single dwelling house;
 - b. the material change of use of the land from an agricultural use to a mixed use of agriculture and residential by:
 - i. The use of a building on the land as a dwelling house.
 - ii. The siting of caravans on the land for residential use.
 - iii. The use of the land as a permanent camp site for visitors.
-

Decision

1. I allow the application in the terms set out below.

The submissions for South Somerset District Council

2. The application is for a partial award of costs relating to unnecessary and wasted expense incurred by the council associated with the preparation for and attendance at the inquiry, resulting from the adjournment and changes to the appellant's case. The council says that the appellant has behaved unreasonably and reference is made to Circular 03/09 – Costs Awards in Appeals and other Planning Proceedings paragraphs A12 and B4.
3. The council's application for costs is set out in writing in document 6.

The response by Mr Davis

4. The response by Mr Davis is set out in document 9. In addition, the appellant notes that the revised proof was only sent in to the planning inspectorate two days short of the normal 4 weeks, and that there was sufficient time for the council to consider its content.

Reasons

5. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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.
6. I acknowledge that the additional proof was sent to the Inspectorate a couple of days short of the normal 4 weeks, and the shortfall is de minimis. While the council has, for reasons relating to other workload, found it difficult to deal with the additional proof; that is not the fault of the appellant. However, there clearly was a marked change to the approach taken by the appellant in relation to the case that was being put on the first day of the inquiry. Clearly much of the time the council expended in relation to the first proof of evidence and submitted information was wasted and the significant change of case was unreasonable behaviour. While the inspector indicated that further material could be submitted, the expectation is for material in support of the original case being put, not a markedly changed case.
 7. In addition, the appellant was not properly prepared for the first day of the inquiry and in response to the inspector's concern about the appellant being able to reasonably present his position, the appellant realised that he would need to seek professional representation. For reasons of natural justice it was necessary for the inquiry to be adjourned. I consider that the council did incur unnecessary expense in association with the time wasted on the first day. It was unreasonable of him to come to the inquiry unprepared.
 8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that a partial award of costs is justified in relation to wasted preparation for the first day of the inquiry and time spent at the inquiry on the first day.

Costs Order

9. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Mr Davis shall pay to South Somerset District Council the costs of the proceedings so far as they related to preparation for the first day of the inquiry based on the appellant's first proof of evidence and attendance on the first day of the inquiry, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to South Somerset District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Graham Dudley

Inspector