



Costs Decisions

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 11/07/2023

Application A - Costs application in relation to Appeal Ref: CAS-02144-F2P1C5

Site address: Land at High Mass Cottage, Five Lanes North, Five Lanes, Caerwent, Caldicot, Monmouthshire, NP26 5PG

- The application is made under the Town and Country Planning Act 1990, sections 174, 322C and Schedule 6.
 - The application is made by Ms S Connolly for a full award of costs against Monmouthshire County Council.
 - The appeal was against an enforcement notice alleging the unauthorised siting of sheds, outbuildings, mobile homes and freight containers on land together with associated works.
 - A site visit was made by the Inspector on 3 May 2023.
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Application B - Costs application in relation to Appeal Ref: CAS-02244-P5N1M3

Site address: Land NW of Holly Lodge, Five Lane North, Caerwent, NP26 5PQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
 - The application is made by Ms S Connolly for a full award of costs against Monmouthshire County Council.
 - The appeal was against the refusal of planning permission for equestrian use including an amended access, a menage, stable block and barn/ store outbuilding.
 - A site visit was made by the Inspector on 3 May 2023.
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Decisions

Application A – Ref: CAS-02144-F2P1C5 - The Enforcement Appeal

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

Application B – Ref: CAS-02244-P5N1M3 - The Planning Appeal

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

Procedural Matters

3. As set out above, there are two applications for an award of costs at the above site. Whilst I shall consider each application on its own particular merits, to avoid duplication, I

shall report on the cases together in this single document, albeit with separate formal decisions.

4. Significant procedural and substantive issues were raised through both Appeal A and Appeal B. However, for the avoidance of any doubt, and in the interest of fairness, my considerations in respect of the applications for an award of costs are confined to the matters raised in the applicant's written applications.

Reasons

5. The Section 12 Annex: 'Award of Costs' ('Costs Annex') to the Welsh Government's (WG) Development Management Manual (DMM) advises that, irrespective of the outcome of an 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. I shall consider the applications on this basis.

Application A – The Enforcement Appeal

6. The arguments advanced for an award of costs in the case of Application A are wide ranging. However, of particular relevance is the claim at paragraph 3.7 of the written application for an award of costs which notes that the withdrawal of the Enforcement Notice would result in unnecessary expense.
7. I set out in written correspondence my concerns with respect to the Enforcement Notice and this led to its withdrawal. The multiple defects in the drafting of the Notice were not of a minor nature, with the operational development Notice attacking, amongst other things, matters comprising a use of land. The requirements of the Notice also went well beyond the matters constituting the alleged breach of planning control. This was clearly unreasonable and, as it resulted in an appeal being unnecessarily lodged, it resulted in wasted expense being incurred by the parties.
8. As unreasonable behaviour resulting in unnecessary expense has been demonstrated, a full award of costs is justified in respect of Application A. The application for an award of costs should therefore be allowed in the terms set out below.

Costs Order

9. In exercise of the powers under Section 218 of the Planning Act 2008 and Regulation 121 of the Community Infrastructure Levy Regulations 2010 and all other enabling powers in that behalf, it is hereby ordered that Monmouthshire County Council shall pay to Ms S Connolly, the costs of the appeal proceedings described under Application A in the heading of this decision.
10. The applicant is now invited to submit to Monmouthshire County 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, an application for a detailed assessment by the Senior Courts Office should be considered.

Application B – The Planning Appeal

11. In the case of Application B, the applicant notes that the Council did not submit an appeal statement and that it failed to meet the deadlines set by Planning and Environment Decisions Wales (PEDW) for responses to concerns raised. However, the Council is not required by legislation to submit a Statement of Case and is entitled to rely on the Notice of Decision and associated Officer's Report. Whilst the other delays in responding to PEDW were frustrating, it has not been satisfactorily demonstrated that such issues led to unnecessary expense being incurred.

12. The applicant makes reference within the application for an award of costs to the planning refusal being unjustified. However, in light of the situation with respect to inadequate plans being submitted, I am not able to consider such matters. I note the fact that the Council proceeded to determine the planning application despite the application failing to satisfy the requirements of Article 5 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. However, I have not considered such matters within the context of this costs application, not least because it did not form part of the applicant's case and has not therefore been a matter for the Local Planning Authority's (LPA) formal rebuttal.
13. Therefore, on the basis of the foregoing, I find that the terms of the application for an award of costs have not demonstrated unreasonable behaviour resulting in unnecessary or wasted expense. It therefore follows that Application B should be refused.

Richard E. Jenkins

INSPECTOR