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## Costs Decision

Site visit made on 11 December 2014

**by P N Jarratt BA DipTP MRTPI**

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

**Decision date: 12 January 2015**

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### **Costs application in relation to Appeal Ref: APP/P0240/C/13/2210680 Land and Grain Store Building, White Gables Farm, Blunham Road, MK44 3RA**

- 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 Robert Anderson for a full award of costs against Central Bedfordshire Council.
  - The appeal was against an enforcement notice alleging the material change of use of the land and grain store building to a mixed use for agriculture/horticulture and the storage of materials and the parking of vehicles in connection with a road haulage business.
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### **Decision**

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

### **The submissions for Mr R Anderson**

2. The application is for both a procedural and substantive award. The Council's 'Determination of Action' report (Appendix GC16 of the appellant's statement) relating to the issuing of the enforcement notice is silent in relation to the permitted haulage use of the adjoining site which has permission and the assessment of this in terms of intensification of noise and disturbance. The report concealed relevant information. The Council failed to co-operate with the appellant and continued with enforcement action despite the submission of an application. The Council failed to carry out a diligent investigation and there was no proper assessment of harm other than making a sweeping presumption that the use of the grain store must result in an increase in traffic movements and increase the harm in terms of noise and disturbance.

### **The response by the Council**

3. There has been no concealment. The report stated that the haulage activity extended onto the appeal site and considered the expediency of enforcement action due to the adverse impact of the extension of haulage use. The planning history is documented in previous appeals and in the current appeal, and a composite plan shows the land with permission.
4. The Council has co-operated with the appellant and relevant copies of letters and other documents show this and it has agreed to an extended compliance period. The planning application was not valid due to an absence of the fee and the adequacy of plans.

5. The Council has behaved reasonably and has met evidence timetables.

### **Reasons**

6. 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.
7. Although the applicant alleges the Council has concealed information, in the agent's statement of response (headed 'Rebuttal'), it is stated that whilst this may not have been deliberate, the Council's 'Determination of Action' report failed to provide a robust evidence base to consider the expediency of taking enforcement action.
8. In my view the report is sufficiently detailed and comprehensive for the decision maker to be satisfied in respect of the expediency of taking enforcement action. It deals with the planning and enforcement history of the appeal site and the haulage operation at the farm, and it refers to the complaints from adjacent occupiers. It meets the general approach to enforcement as set out in Section 17b of Planning Practice Guidance.
9. In view of their knowledge of the appeal site and the complaints submitted by local residents, it is reasonable for the Council to have concluded that the expansion of the haulage business onto the appeal site would lead to increased activity and consequently to increased disturbance. The level of haulage activity is insufficiently evidenced by the appellant, either in terms of that associated with the haulage business or with the lawful agricultural use of the site, to be confident that increased disturbance is not currently occurring or that it would not have the potential to occur in the future.
10. The applicant's statement in response to the Council's comments introduces an additional reason to support an award of costs relating to the fact that the impact on the highway network was not relied on in the notice. However, this additional reason has been introduced after the Council has responded to the original application for an award of costs and for it to be introduced at this late stage in the process would not be in the interests of natural justice. However, notwithstanding this, I note that the reasons for issuing the notice do not make reference to the impact on the highway network although this is referred to in the Council's statement. Even were I to conclude that this may constitute unreasonable behaviour, the applicant has not demonstrated that this has resulted in additional and wasted costs.
11. I note that the Council has co-operated with the appellant and the appellant should not have expected the Council to delay enforcement action when it was his own failure to submit a valid application with the appropriate fee.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*P N Jarratt*

Inspector