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The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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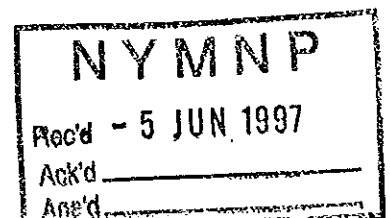
Your Ref
MS/4/29/325D/EF
Our Refs
T/APP/C/96/P2745/64117+8

Date
- 3 JUN 1997

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
PLANNING (CONSEQUENTIAL PROVISIONS) ACT 1990, SCHEDULE 4
APPLICATION FOR COSTS BY NORTH YORK MOORS NATIONAL PARK

1. I refer to your application for an award of costs against the appellant, which was made at the inquiry held at Robin's Hood Bay on 25 and 26 March 1997. The inquiry was in connection with appeals by Mr J R Cussons against 2 enforcement notices served by the North Yorkshire County Council, which concern land and a building at Howdale Farm, Fylingdales. The allegations are, in the first notice, change of use of the building from agricultural use to use for residential purposes and, in the second notice, change of use of the building from agricultural use to a mixed use for residential and agricultural namely general agricultural storage. A copy of my appeals decision letter is enclosed.
2. In support of your application for costs you referred to Circular 8/93 and stated that the appellant's unreasonable behaviour had caused your authority unnecessary expense. You would not repeat the planning case; the appellant had not been reasonable in pursuing these appeals. You said that in these matters an award of costs should be made if the appeal building was found not to have been constructed as a dwelling. To reject the ground (d) appeal was tantamount to saying that the appellant was not honest and had sought to deceive. The application for an award of costs was self evident; the basis of the appeal had been unreasonable. The application was unusual in that cost must follow the event. You would incorporate your closing submissions. The application depended on whether the appellant was thought to have been telling the truth.
3. In response, it was said for the appellant that, having exercised his statutory right of appeal, he must be reasonable and adduce proper evidence. He had produced the evidence in particular the evidence he had submitted to support his 1996 application for a Certificate of Lawfulness; the local planning authority had not effectively challenged this evidence. If the appellant was thought to have been telling the truth the local planning authority were not entitled to costs.



4. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome. Costs may only be awarded against a party who has behaved unreasonably, and thereby caused another party to incur or waste expense unnecessarily.

5. On ground (b) I found compelling evidence that the appeal building had not been constructed as a dwelling or so used initially. On ground (d) I found, on the balance of probabilities, that the appeal building had not been used as a residence for 4 years before the enforcement notice was issued. In both matters compelling independent evidence which withstood cross-examination supported your case. The appellant's case contained several inconsistencies; the authors of his supporting statements could not be questioned on their evidence, much of which was vague. The statutory right of appeal should be exercised in a reasonable manner. In my opinion the appellant behaved unreasonably in pursuing an appeal which obviously had no reasonable prospect of success. I therefore conclude that your authority's application for an award of costs is justified.

FORMAL DECISION

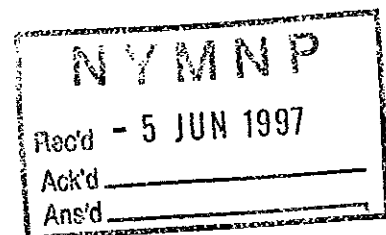
6. Accordingly in exercise of my powers under section 250(5) of the Local Government Act 1972, and paragraph 6(4) of schedule 6 to the Town and Country Planning Act 1990, and all other powers enabling me in that behalf, I HEREBY ORDER that Mr J R Cussons shall pay to the North York Moors National Park, as successors to the North Yorkshire County Council, the costs of the proceedings of this inquiry, such costs to be taxed in default of agreement as to the amount thereof. The subject of the proceedings was 2 appeals under section 174 of the Act of 1990 as amended against 2 enforcement notices, issued by the North Yorkshire County Council, on 30 January 1996, and alleging breaches of planning control as follows:

- (a) Change of use of the building from agricultural use to use for residential purposes;
- (b) Change of use of the building from agricultural use to a mixed use for residential and agricultural namely general agricultural storage.

7. You are now invited to submit to Mr J R Cussons, to whose agents, Ward Hadaway, a copy of this letter has been sent, details of those costs with a view to reaching agreement as to the amount thereof. A copy of the guidance note on taxation procedure, referred to in Circular 8/93, is also enclosed.

Yours faithfully

C G WEST LLB ACI Arb FIMgt FCIS Solicitor
Inspector



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GUIDANCE NOTE

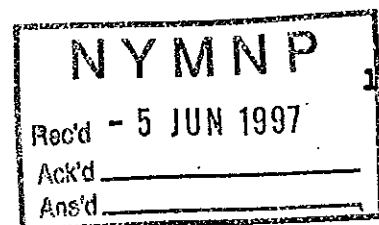
DEPARTMENT OF THE ENVIRONMENT
WELSH OFFICE

AWARD OF APPEAL COSTS:

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5).

HOW TO APPLY FOR ADJUDICATION WHEN THE AMOUNT OF AN AWARD OF COSTS IS DISPUTED.

1. If parties cannot reach agreement on the amount of costs to be recovered, either party can refer the disputed costs to a Taxing Officer or Master of the Supreme Court Taxing Office for determination. This process is called taxation.
2. Before any disputed costs can be referred to taxation the costs award must be converted into an order of the High Court.
3. No interest can be claimed on the costs unless and until a High Court order has been made, and interest will only run from the date of such order.
4. Application for taxation is in two stages. The first, described in paragraph 5 below, is to apply to have the costs award made an order of the High Court. The second stage described in paragraph 6 below, is to apply to commence taxation proceedings.
5. The procedure for applying to have the costs award made an order of the High Court, is as follows:-
 - (a) Write to the Head Clerk, Crown Office, Royal Courts of Justice, Strand, London WC2A 2LL, referring to section 250(5) of the Local Government Act 1972, and enclosing the original of the order of the Secretary of State, or his Inspector, awarding costs. It is no longer necessary to certify a failure to agree costs for the costs award to be made an order of the High Court and establish the right to interest. A prepaid-return envelope should be enclosed.
 - (b) an order making the costs award an order of the High Court will be then sent to you.



6. Once the costs award is made an order of the High Court, proceedings for taxation must be begun within 3 months. The procedure for commencing taxation proceedings is as follows:-

(a) Take or send the original of the High Court order, together with a certified true copy of that order, to the Chief Clerk, Supreme Court Taxing Office, Cliffords Inn, Fetter Lane, London EC4A 1DQ, together with a bill detailing the costs claimed and any supporting papers.

(b) The original of the High Court order will be returned together with the name of the Taxing Officer or Master who will deal with the case.

7. The Taxing Officer or Master may disallow costs and/or interest on such costs in the event of any delay in starting or conducting the taxation.

8. This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek appropriate professional advice.

Footnote

The procedure for taxation is governed by Order 62 of the Rules of the Supreme Court (as contained in the Schedule to the Rules of the Supreme Court (Amendment) 1986 (Statutory Instrument 1986/632 (L2)) - available from HMSO Bookshops).