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Your Ref: 1283 gundrys
Our Ref: APP/U1240/C/18/3218259
Date: 20 May 2020

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 174 AND 322
LAND AND PREMISES AT GUNDRYS FARM, SCHOOL LANE, THREE LEGGED CROSS,
DORSET
APPEAL BY ROYALE PARKS (DORSET) LTD: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Housing, Communities and Local Government to refer to the Planning Inspectorate's letter of 6 February 2020 confirming the withdrawal of the enforcement notice issued by East Dorset District Council dated 14 November 2018. The notice alleged multiple breaches of planning control (as stated at section 3 of the notice) on land and premises described above.

2. This letter deals with your application, on behalf of the appellants, for a full award of costs against the Council as made in your written correspondence dated 18 February and 9 March 2020. The Council replied on 2 March 2020. As these costs submissions have been made available to the parties it is not proposed to summarise them.

Summary of decision

3. The costs application succeeds and a full award of costs is being made. The formal decision and costs order are set out in paragraphs 12 and 13 below.

Basis for determining the costs application

4. In enforcement notice appeals (as for appeals in general) the parties are normally expected to meet their own expenses irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.

5. Section 322 of the Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any party which do not give rise to a local inquiry where it is found that one of the parties to the appeal has behaved unreasonably and the expense incurred by any of the other parties is wasted as a result.

6. The application for costs has been considered in the light of the awards of costs section of the Government's Planning Practice Guidance (PPG), the appeal papers, the written costs correspondence and all the relevant circumstances.

Reasons for the decision

7. Particular regard has been paid to the guidance at paragraph 047 & 048 of the PPG. The decisive issue is whether or not the combination of the Council's decision to issue the enforcement notice, and to subsequently withdraw it during the course of the appeal proceedings, amounts to unreasonable behaviour with the result that the appellants incurred wasted expense in the appeal process.

8. It is noted that the appeal was submitted on 11 December 2018. The Inspectorate's procedural letters of 17 September 2019 provided the parties with a "start date" for the appeal and a timetable was set for the submission of appeal documentation. It was explained that an inquiry would be arranged for the appeal. It proceeded towards the inquiry, scheduled for 11 February 2020, and the parties submitted documentation in support of their respective cases. However, on 3 February 2020, the Inspectorate wrote to the Council inviting them to consider withdrawal of the enforcement notice. The reasons for this were contained in an enclosed note ("Preliminary Note") from the relevant Planning Inspector. In short, he considered that the notice was either a nullity or was invalid and incapable of correction without injustice to either party. In response the Council acted to withdraw the enforcement notice on 4 February 2020.

Conclusions

9. The Secretary of State has taken into account as a material consideration the basis on which the enforcement notice was withdrawn – the Council acknowledged that the notice lacked accuracy. Having carefully considered the available information, and notwithstanding that the appeal was at a late stage in the proceedings when the Inspectorate raised the nullity/invalidity issue, the Secretary of State finds it difficult to escape the conclusion that the onus was on the Council to ensure, at the outset, that the enforcement notice was correctly worded and not technically defective before proceeding to issue it. In the particular circumstances the conclusion drawn is that the Council acted unreasonably in issuing the enforcement notice (worded as it was). As a result the appellants incurred wasted expense in the appeal process. A full award of costs is therefore considered justified.

10. For the avoidance of doubt the Secretary of State does not decide the amount of costs payable. This is for the parties' agreement or via application for detailed assessment in the Senior Courts Costs Office.

11. This decision should not be taken to imply any view on the merits of the Council's decision to take enforcement action at the outset.

FORMAL DECISION

12. For these reasons the Secretary of State has decided that a full award of costs, on grounds of "unreasonable" behaviour resulting in unnecessary or wasted expense, is justified in the particular circumstances.

COSTS ORDER

13. Accordingly, the Secretary of State for Housing, Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 174 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, **HEREBY ORDERS** that East Dorset District Council shall pay to Royale Parks (Dorset) Ltd their costs of the enforcement appeal proceedings

before the Secretary of State; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in paragraph 1 of this letter.

14. You are now invited to submit, on behalf of the appellants, details of those costs to Elizabeth Adams (Principal Planning Officer) at East Dorset District Council with a view to reaching an agreement on the amount. A copy of this letter has been sent to her.

Yours faithfully

John Gardner

Authorised by the Secretary of State
to sign in that behalf