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## Costs Decision

Inquiry held on 14-17 January, 25-27 February and 24 March 2025

Site visit made on 27 February 2025

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 May 2025

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### **Costs application in relation to Appeal Refs: APP/P1615/C/24/3352196 & 3352197 Tan House, Laundry Lane, Newland, Coleford GL16 8NQ**

- 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 Lady Tanya Somerset and Mr Francois Norris for a partial or full award of costs against Forest of Dean District Council.
  - The inquiry was in connection with an appeal against an enforcement notice alleging a material change in the use of land and operational developments on the land.
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### **Decision**

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

#### **The submissions for Lady Tanya Somerset and Mr Francois Norris**

2. The costs application and final comments were submitted in writing.

#### **The response by Forest of Dean District Council**

3. The response was made in writing.

### **Reasons**

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.

5. The first enforcement notice issued by the Council, its subsequent withdrawal, and a costs award made against the Council are not matters relevant to this costs decision. The Appellants carried out operational development on the land for which planning permission had not been granted. The Council did not act unreasonably in taking enforcement action against these unauthorised developments.

6. The Appellants purchased Tan House in 2019. They continued the bed and breakfast business started by a previous owner and started an events business which utilised the letting bedrooms in Tan House and the accommodation in the annex to it. The commencement of the events business in itself constituted a material change of use of the property because it changed the character of the use of the land. At that time Hillside Retreat was in separate ownership; Lady Somerset did not purchase the property until 2021. The Council allege in the notice that Hillside Retreat then became included in the events/holiday letting venue. But it remained a separate dwellinghouse and was only used occasionally in conjunction with the events business.

7. That Hillside Retreat remained a separate dwellinghouse was argued by Mr Tufnell, the Appellants' Agent, in an email to the Council dated 11 March 2024. He stated that "It is in different ownership to Tan House...and is to be retained in primary residential C3 use, which is its authorised use...(It) is not used to host weddings. It is let and owned independently to Tan House and has its own title. It is occupied by...(Lady Somerset's oldest son)...and occasionally let as holiday accommodation when he is away on study or work".

8. The Council did not issue a Planning Contravention Notice (PCN) which could have asked specific questions about the status of Hillside Retreat, and about Tan House and the events business. It is an offence to fail, without reasonable excuse, to comply with the requirements of a PCN or to knowingly give information, in response to a PCN, which is false or misleading. The Council could have relied upon the responses to a PCN, if one had been issued, in drafting the enforcement notice.

9. The Council need not serve a PCN before considering whether it is expedient to issue an enforcement notice so it was not, in itself, unreasonable not to do so. However, they had received information, in the aforementioned email, about the status of Hillside Retreat. The email was, in part, the Appellants taking the "...opportunity to set out their case and explain their position". However, the Council ignored the information and, in the alleged material change of use set out in the enforcement notice the use of Hillside Retreat is included as being part of an events/holiday letting venue.

10. It was unreasonable for the Council to presume the use of Hillside Retreat in drafting the enforcement notice when in receipt of information that contradicted that presumption. It would have been expedient, in such a situation, to issue a PCN to ascertain the use of Hillside Retreat before drafting the notice. Answers to focused questions in a PCN would also have assisted in ascertaining the use of land around Tan House and the history of occupation and part business use of Tan House. The alleged material change of use as stated in the notice is fundamentally flawed and resulted in a conclusion, in the appeal decision, that it would need wholesale variation to accurately reflect the previous and current uses of the land.

11. The Council did not act unreasonably in taking enforcement action against the unauthorised developments carried out on the land. The Council has acted unreasonably, however, in drafting a fundamentally flawed alleged material change of use and the Appellants have incurred wasted expense in appealing against this element of the alleged breach of planning control.

### **Costs Order**

12. In exercise of the 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 enabling powers in that behalf, IT IS HEREBY ORDERED that Forest of Dean District Council shall pay to Lady Tanya Somerset and Mr Francois Norris, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in appealing the material change of use element of the alleged breach of planning control; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Forest of Dean 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.

***John Braithwaite***

Inspector