

Costs Decision

Hearing held on 2 August 2016

Site visit made on 2 August 2016.

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 23 November 2016

**Costs application by the Council in relation to
Appeal Ref: APP/L2630/X/16/3142008
Grove Farm, Middle Road, Denton, Harlestone IP20 0AH**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by South Norfolk District Council for a full award of costs against Stuart Hardwick Carruthers.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for a certificate of lawful use or development for:
 - i. Proposed light industrial use for the manufacture, repair and storage of goods used to provide services at festivals.
 - ii. The proposed residential use of a lawful dwelling.
 - iii. The proposed residential use of a former dwelling.
 - iv. The proposed equine use of land.
 - v. The proposed storage of caravans, mobile homes et cetera on land used to provide residential services.
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Decision

1. The application for a full award of costs is allowed as set out in the Formal Decision and Costs Order below.

The submissions for the Council

2. The appellant had behaved unreasonably in seeking to use the s.191/192 process to pursue the possible invalidity of enforcement notices and questions regarding the Council's enforcement register when previously advised by the Inspectorate that they were not matters that could be taken into account. An unreasonably large volume of documents relate to those matters in particular.
 3. The arguments put forward to support the claims of lawful uses of the site are so woefully inadequate that it was not reasonable to pursue them to appeal in any case.
 4. The Council had been put to the expense of dealing with or processing a large amount of material which was either irrelevant or entirely inadequate to justify the arguments. This was wasted expense, and a full award of costs should be made.
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The reply by the appellant

5. The House of Lords case of *Wrexham v Berry*¹ identifies that that the planning system is the responsibility of Local Planning Authorities, with appeal possible to the Secretary of State. This appeal has been made to the Secretary of State as the Local Planning Authority have certified that the registers they are required to maintain are no more than a bagatelle. Defects in the register render the relevant enforcement notices as nullities. In this context it was entirely reasonable to bring the case on the principal argument that there were no valid enforcement notices capable of taking effect, meaning that the proposed uses of the land would be lawful.
6. There had been no unreasonable behaviour in bringing the appeal, and the Council had not been caused to incur wasted or unnecessary expense.

Reasons

7. I have determined the application in the context of the government's Planning Practice Guidance (PPG). Paragraph 030 (reference ID: 16-030-20140306) of the guidance on appeals advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
8. The appellant's principal argument for the uses being lawful is that various enforcement notices issued against developments on the appeal site are nullities. This is on the basis that missing elements in entries contained in the Council's enforcement register render the notices as nullities, and they are not capable of taking effect against the proposed uses, which must therefore be considered lawful.
9. It has been made clear to the appellant, by the Council and the Inspectorate that the validity of enforcement notices cannot be questioned other than by way of an appeal under Part VII of the Act on any of the grounds on which such an appeal may be brought. There are limited exceptions to this, notably under the provisions of s.285(2), the land owners had the opportunity to plead their case concerning non-service of notices and prejudice to their interests in those cases where there were s.179 court proceedings. However, they did not take this opportunity.
10. Several of the relevant notices were taken to appeal, but in those where a case was made on invalidity, this was dismissed. It is not reasonable to make a further attempt to show invalidity. The High Court judgement in the case of *Stern* has no reasonable similarity to the arguments put forward by the appellant in this case, where the site owners had not been denied the opportunity to appeal against any of the notices.
11. There may be defects or omissions in the Council's register of enforcement notices, and the appellant may wish to question why he was unable to have access to that register. However, the relevant notices are contained in the register, and there is nothing in the Act to indicate that these perceived deficiencies provide a route to question the validity of the notices themselves. If these matters were to be pursued, it must be through other means.

¹ *Wrexham County Borough Council (Appellants) v. Berry (Respondent) and two other cases (consolidated appeals)* [2003] UKHL 26 on appeal from: [2001] EWCA Civ. 1549.

12. In this context I consider the attempt to question the invalidity of earlier notices at a s.195 appeal so persistently, and with such a large volume of purported evidence, was unreasonable. I consider the Council incurred unnecessary and wasted expense in defending their case.
13. Furthermore, the appellant's argument that a proposed use would be lawful in the absence of a valid enforcement notice is a serious misinterpretation. It fails to recognise that a use may be lawful for various reasons, such as that no enforcement action may be taken against it, it does not constitute development, that planning permission has been granted, that it would be permitted development under the GPDO, or that the time to take enforcement action has passed. I consider it was unreasonable to put forward this inadequate argument, which formed the principal basis for the appeal, and caused considerable wasted expense.
14. Regarding the claimed existing light industrial use, there were various assertions about the date at which this use may have started. However, there was no evidence at all from the claimed operator – written or oral – or those who may have worked for him, no documentary evidence from the site owners, and no significant physical evidence of the claimed existing use on the site. In a case of this kind the burden of proof is on the appellant to show that on the balance of probabilities the use had subsisted continuously for the necessary period before the LDC application was made. The appellant was so far from discharging this burden that I consider it was unreasonable for the appeal to be pursued in this regard.
15. As regards the proposed equine use, the inclusion of a proportionately very small piece of land within an area for which a LDC exists for a specific equestrian use provides no support for the view that the remainder of the land can be lawfully used in that way. Furthermore, the proposed use has been inadequately described. I consider it was unreasonable for the appellant to pursue this aspect of the application.
16. Regarding the proposed 'residential use of a lawful dwelling' in the Barn, it was misleading to refer to this being a lawful dwelling since the use as a dwelling was found to be unlawful in the 2011 appeal against the material change of use notice. Resumption of this use, and of the dwelling in the Stables would inevitably be unlawful by reason of contravening the relevant notice. Furthermore, the application for prior approval for change of use of parts of the Barn and the Stables to C3 dwelling houses had been refused, and dismissed at appeal. It is plain there are no permitted development rights available for residential use of these parts of the buildings. Overall, it was unreasonable to continue with the claim of lawfulness.
17. As regards the proposed storage of 'caravans, a mobile home etc.', again this would be in contravention of an enforcement notice, it would be development for which there is no planning permission, and no permitted development allowances are available.
18. In summary, I consider it was unreasonable for the appellant to pursue a s.195 appeal on the grounds of invalidity/nullity of previous enforcement notices. Furthermore, the existence of these notices, and the evident lack of permitted development rights for material change of use from agricultural use to residential use, and from agricultural to use for 'storage of caravans, mobile home etc.', made it inevitable that these appeals would be dismissed.

Evidence to support the claimed light industrial use was far short of the precision and lack of ambiguity that can be expected in a s.195 appeal, and there was effectively no evidence to support an equine use of the entire site. I consider the appellant behaved unreasonably with respect to all these instances, and that as a result the Council incurred unnecessary expense.

Formal Decision and Costs Order

19. The application for a full award of costs is allowed.
20. 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 Mr Stuart Hardwick Carruthers shall pay to South Norfolk District Council, the costs of the appeal proceedings described in the heading of this decision.
21. The applicant is now invited to submit to Mr Stuart Hardwick Carruthers, 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, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Stephen Brown

INSPECTOR