
Costs Decisions

Site visit made on 26 September 2016

by D E Morden MRTPI

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

Decision date: 10 January 2017

Costs application in relation to Appeal Ref: APP/C1760/C/16/3143983 The Forge, Lye Farm, Pugs Hole Lane, West Tytherley, Hants, SP5 1LA

- 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 Test Valley Borough Council for a full award of costs against Mr I Vine.
- The appeal was against an enforcement notice alleging the material change of use from use as a farriers' forge (Use Class B2) to use as a dwelling house (Use Class C3).

Decision: The application is refused and no award of costs is made.

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- 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 I Vine for a full award of costs against Test Valley Borough Council.
- The appeal was against an enforcement notice alleging the material change of use from use as a farriers' forge (Use Class B2) to use as a dwelling house (Use Class C3).

Decision: The application for an award of costs is allowed in the terms set out in the Costs Order at paragraph 11 below.

The submissions for Test Valley Borough Council

1. The application was for a full award of costs. Paragraph 18 of the Planning Policy Guidance states that a ground of appeal that is cited unreasonably, even if later withdrawn, may be subject to a claim for costs where it has caused unnecessary expense for the local planning authority.
2. The appellant's approach to this appeal had been unreasonable. Professional advice was sought and the appeal proceeded with on a misunderstanding of the Use Classes Order. The illogical assumption that the building falls within Use Class C3 is plainly incorrect but it underpins the entirety of the appellant's case. It was unreasonable to put forward the arguments that were put forward in those circumstances and the appeals were bound to fail. The Council has been put to unnecessary costs in dealing with this appeal and those costs should be borne by the appellant.

The response by Mr I Vine and the Counterclaim

3. In response the appellant submitted that there was no breach of planning control taking place when the notice was issued or any evidence to suggest it would re-occur. It was made clear to the Council that if anything had occurred

that was in contravention of planning control it was a breach of condition(s) and not a material change of use. The Council was invited to withdraw the notice but chose not to do so. The Council should have realised that it had made this error initially and not then proceeded with this action.

4. It should have required the removal of the fittings as the building has been left with a nil use; the forge use has been abandoned following the internal alterations and its actions have been disjointed, misinformed and incoherent.

The response by Test Valley Borough Council to the Counterclaim

5. The Council responded that the appellant had not addressed the requirements for costs applications contained within the National Planning Policy Framework. At the time of writing the appellant had not corrected his representations concerning the Use Classes Order and, therefore, the foundations of his appeal. Even if these are altered such an alteration at such a late stage in proceedings constitutes unreasonable behaviour and has caused the Council additional unwarranted costs in the administration of the appeal.

Reasoning

6. The 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. As is evident in my decision to quash the Notice, I do not agree with the Council's allegation in this case. Having said that however, it is also clear that the correct legal interpretation of the situation is a matter for the courts to decide and not something upon which either party has been able to make formal submissions to me.
8. There is clearly a disagreement between the parties concerning the appropriate use class and both parties in their representations set out their views on the matter and their reasons as to why their view should prevail. However, that was not a relevant consideration for me in coming to the conclusion that the Notice was a nullity. The appellant did state that he believed the notice should have alleged a breach of condition and not a material change of use. That however was in relation to the 2011 permission and not the 2013 permission which is the relevant one in this case.
9. Ultimately the courts may have to decide if my conclusion is correct or not. However, faced with the issue of an enforcement notice the appellant really had no choice but to appeal against what was alleged and deal with it on that basis. The whole process in this case was instigated by the Council issuing the Notice it did thereby causing the appellant unnecessary expense in having to deal with an appeal based on a defective Notice. The Avon Estates case is well published and the Council (indeed both parties) should have been aware of it and its ramifications for the situation at this site.

Conclusions

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated by the appellant and I will allow his application. The application by the Council is refused; the appellant had to answer the allegation made even if it was misconceived. He did point out that the Notice should have

alleged a breach of condition in his early representations but this was ignored through the Council continuing to pursue the incorrect allegation.

Costs Order

11. 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 Test Valley Borough Council shall pay to Mr I Vine, the costs of the appeal proceedings described in the heading of this decision such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Test Valley Borough 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.

D E Morden

INSPECTOR