

## Costs Decisions

Hearing held on 7 February 2017

Site visit made on the same date

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

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

**Decision date: 07 March 2017**

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### **Application A:**

**Costs application in relation to Appeal Ref: APP/J0540/C/16/3152721**

**Land at 55 Cherry Orton Road, Orton Waterville, Peterborough, PE2 5EH**

- 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 Peterborough City Council for a full award of costs against Mr R Phillips (RP Meats Ltd.).
  - The hearing was in connection with an appeal against an enforcement notice alleging the change of use of the area under the canopy (shaded blue on the plan attached to the notice) from a mixed use to sole use as industrial land by the placing of a walk-in refrigerator unit under said canopy.
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### **Application B:**

**Costs application in relation to Appeal Ref: APP/J0540/C/16/3152721**

**Land at 55 Cherry Orton Road, Orton Waterville, Peterborough, PE2 5EH**

- 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 R Phillips (RP Meats Ltd.) for a partial award of costs against Peterborough City Council.
  - The hearing was in connection with an appeal against an enforcement notice alleging the change of use of the area under the canopy (shaded blue on the plan attached to the notice) from a mixed use to sole use as industrial land by the placing of a walk-in refrigerator unit under said canopy.
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### **Appeal A: Decision**

1. The application by the Council for an award of costs is refused.

### **Appeal B: Decision**

2. The application by the Appellant for a partial award of costs is refused.

### **The submissions for the Council**

3. Given the history of the location of the refrigerator on the appeal site the Appellant was aware that its presence was unauthorised. There has been a history of retrospective applications in respect of this site. There was an enforcement appeal which was dismissed and led to an unsuccessful prosecution by the Council. When the refrigerator was located in a different place on the site, the subject of the previous enforcement notice in 2013, the Council advised the Appellant that he would not obtain a grant of planning
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permission if it was moved. The Council has incurred expense in taking enforcement action for a second time.

### **The response and submissions by the Appellant**

4. The Council has served a notice that is on its face a new matter. The Appellant is entitled to appeal and whatever decision is made it was reasonable for him to appeal. There was a good and substantive argument put forward which was not fanciful and to which proper consideration had been given.
5. The Appellant was prosecuted for failure to comply with the previous notice but this was dismissed. The Council had every opportunity to proceed again but chose not to.
6. A period of 18 months elapsed before this notice was issued and the Appellant has no knowledge why this was so. In 2014, before the notice was issued, the Council indicated to the Appellant's Agent that there would be no material change of use but the Council has changed its mind since then. There are no grounds for the Council to pursue an application for costs.
7. It is however relevant to consider how parties behave in appeal proceedings. The Council should have withdrawn the notice once Appellant's position with regard to the mixed use had been made clear in his final comments. The Appellant therefore seeks a partial award of costs dating from the date of his final comments, 19 October 2016.

### **The response by the Council to the Appellant's application**

8. The Council has put forward a robust case and does not consider that it has acted unreasonably in the appeal process.

### **Reasons**

9. 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<sup>1</sup>.
10. With regard to the Council's application for costs, it is a matter for the Council how it exercises its planning function. This appeal site has a long and complicated planning history that includes some planning applications made by the Appellant being granted; some being refused; an enforcement notice being upheld on appeal; and a prosecution for non-compliance being dismissed. I accept that some of the applications were made retrospectively but an application for retrospective planning permission is permitted by the 1990 Act. In the circumstances I consider it was not unreasonable for the Appellant to appeal against the enforcement notice in this case.
11. The Appellant presented an arguable case against the terms of the notice and in respect of his ground (a) appeal. At the Hearing he also withdrew the ground (g) appeal because the grounds put forward when the appeal was made were not relevant at the time of the Hearing and the likely date of the decision. I therefore find that the Appellant did not act unreasonably within the terms of the Planning Practice Guidance.

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<sup>1</sup> Paragraph 030

12. So far as the Appellant's application is concerned, in response to my question the Council advised that whilst legal advice had been sought with regard to the drafting of the notice, none was sought thereafter. The Appellant did not raise the question of the planning unit in his original grounds of appeal and this element of his case only became apparent in his final comments. The Appellant did not give notice that he would be legally represented at the Hearing and in the circumstances the Council was not legally represented. Therefore provision was made for legal submissions to be made by the Council in writing after the Hearing date with provision for a written response by the Appellant.
13. The points raised by the Council at the Hearing and in the written submissions put forward a proper and arguable position on behalf of the Council against the Appellant's case in respect of the planning unit. In the circumstances I do not consider that the Council acted unreasonably in the terms of the Planning Practice Guidance in not withdrawing the notice after receipt of the Appellant's final comments.

**Appeals A and B: Conclusions**

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated by either the Council or the Appellant.

*Gloria McFarlane*

Inspector