

Costs Decision

Inquiry held on 16 and 17 May 2017

Site visit made on 17 May 2017

by Nigel Burrows BA MRTPI

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

Decision date: 20 June 2017

**Costs application in relation to Appeal Ref: APP/V2635/C/16/3154734
Land at Mill House Cottage, Queen Elizabeth Way, Castle Rising, Norfolk,
PE31 6AL**

- 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 King's Lynn and West Norfolk Borough Council for a partial award of costs against Mr Stephen Bacon.
 - The appeal was in connection with an enforcement notice alleging 'the material change of use of an ancillary outbuilding into an independent self-contained residential dwellinghouse.'
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Decision

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

Reasons

2. The Planning Practice Guidance suite (PPG) published by the Government in March 2014 advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
 3. The appeal against the enforcement notice proceeded on grounds (a) and (d) at the Inquiry. Ground (a) is that planning permission ought to be granted for what is alleged in the notice. Under ground (d) it is argued that at the time the notice was issued, it was too late to take action against the matters stated in the notice. The Council's costs application relates to ground (d) and also to the appellant's late withdrawal of grounds (e) and (g).
 4. Ground (d) is known as one of the 'legal' grounds of appeal. The onus is firmly on the appellant to make out the case that, in effect, the matters alleged in the notice occurred at least 4 years before it was issued and it was too late for the Council to take enforcement action against the use of the outbuilding as an independent self-contained dwelling.
 5. The appellant acquired Mill House Cottage in 2013. He does not appear to have first-hand knowledge of the use of the outbuilding before that time. Although the appellant has produced some evidence concerning the previous use of the outbuilding, for the most part this appears to rely on assumptions about how the previous owners (Mr and Mrs Taylor) used the accommodation. Much of the evidence appears to have been produced relatively late in the enforcement proceedings and some was produced at the Inquiry.
 6. As I indicate in my appeal decision, the quantum of evidence demonstrates the outbuilding was occupied by tenants as an independent, self-contained dwelling from around February 2015 until they vacated it in June 2016. However, the evidence before that period is much less conclusive. Whilst the documentary and photographic evidence shows the outbuilding appeared to have the facilities necessary for day-to-day living, there is no firm evidence to demonstrate that it was used as a separate or independent self-contained dwellinghouse.
 7. In my view an early and rigorous review of the evidence available to the appellant should have shown the weaknesses in his case, thereby potentially triggering the withdrawal of
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- ground (d). This might have avoided the need for an Inquiry to hear evidence on ground (d). The appeal could have proceeded by written representations, or an informal hearing.
8. Turning to ground (e), that the notice was not properly served on everyone with an interest in the land, this was withdrawn by the appellant's consultant on 24 April 2017 - less than one month before the Inquiry. It is not entirely clear why the appellant believed there might be a prospect of success on ground (e). The notice was apparently served on the appellant at three separate addresses and upon the occupiers of the outbuilding and the Principality Building Society. The appellant has not produced any firm evidence to suggest otherwise. The progression of the appeal on ground (e) appears unreasonable.
 9. Notice of the withdrawal of ground (g) was given in the proof of evidence prepared by the appellant's planning witness and was subsequently confirmed at the Inquiry. The appellant had apparently misunderstood the requirements of the notice. However, the notice does not require the carrying out of any physical works. Whilst it requires the unauthorised use to cease, in effect, the appellant took steps to comply with the notice during May-June 2016.
 10. I conclude the appellant's decision to pursue an appeal on ground (d) and the late withdrawal of grounds (e) and (g) constitutes unreasonable behaviour of the type described in paragraphs 053 and 054 of the costs chapter of the PPG. The Council has also incurred unnecessary expense in countering the appellant's submissions upon these grounds.
 11. I conclude that a partial award of costs is therefore justified, limited to those costs incurred in countering the appellant's submissions upon grounds (d), (e) and (g) in this appeal.

Costs Order

12. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that Mr Stephen Bacon shall pay to King's Lynn and West Norfolk Borough Council the costs of the appeal proceedings, limited to those costs incurred in countering the appellant's submissions on grounds (d), (e) and (g), such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an enforcement appeal heard at a Local Inquiry, more particularly described in the heading of this decision.
13. The Council is now invited to submit to the appellant, 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.

Nigel Burrows

INSPECTOR