
Costs Decision

Site visit made on 8 August 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 16 August 2017

Costs application in relation to Appeal Ref: APP/X2220/W/17/3174640 1 & 2 Cold Storage Units, East Street CT3 2DA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr & Mrs Vines for a full award of costs against Dover District Council.
 - The appeal was against the refusal to grant prior approval required for change of use from storage (Use Class B8) to residential dwelling (Use Class C3).
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Decision

1. I refuse the application for an award of costs.

Reasons

2. 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.
3. The Class P rights to change the use from B8 storage and warehousing to C3 dwellinghouse runs for a three year period from 15 April 2015 to 15 April 2018. The start date is the date that the Order came into force and the end date is as set out in paragraph P.1.(c) of the Order. The requirements of paragraphs P.1.(a) and (b) do therefore require significant elements of retrospective evidence, that is to say, being able to prove what use the buildings were being put to prior to the start of the three year period, or as in this case, the date of the application on 21 December 2016.
4. The appellants have clearly needed to keep records for various reasons to do with the running of businesses and accounting for their tax affairs, as well as to do with the use of the buildings by businesses in which they had no other interest. Some of those business activities could have involved activities that would not have fallen within Use Class B8, for instance if manufacturing or fabrication of fencing had taken place. The onus is on the appellants to prove the situation and on the Council to consider it and determine the case reasonably.
5. It does appear to be the case that the only change in the information presented at appeal from that presented to the Council is the clarification drawing of what comprises Units 1, 2 and 3. All other information was apparently made available including the sworn statements.
6. Looking first at Ground 1, on the Council's handling of the application, there does appear to have been engagement, although the original case officer had

to be replaced at some time. The appellants agreed to an extension of time, whereas an appeal could have been made on non-determination. However, in view of the onus being on the applicants to supply all information and access if required, there is no indication of unreasonable behaviour leading to unnecessary expense on this ground, as it appears likely that expense would have been incurred necessarily. The same finding applies to Ground 2, as it is not explained what the appellants were able to show the Officer during the visit to explain the matter of Brickfinder Ltd.

7. Grounds 3 and 4 concern the Council's actions once the appellants' appeal documentation was to hand, the view being that there was an opportunity for the Council to re-appraise their stance. However, there were clearly elements of doubt as to how the various business users related to each other and the buildings.
8. The evidence presented to the same Council with regard to a previous application concerning change of use under Class Q from agricultural to dwellinghouse was clearly considered by the appellant to be compelling at that time, hence the decision to make an appeal. It appears entirely reasonable that the Council should attach weight to that appeal evidence, notwithstanding the Inspector's findings, as further doubt over historic use.
9. The accompanying Appeal Decision has been made on the balance of probabilities, based on the same information available to the Council. As stated, the requirement on the introduction of Class P rights would almost invariably require some interpretation and balance of probabilities over what had happened in the past. The Council did make some errors in their consideration, but the situation with regard to the units is not clear-cut, bordering on the confused. Paragraph W.(3) provides for refusal of prior approval where there is doubt through insufficient evidence and to come to that conclusion in this case is not an indication of unreasonable behaviour.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

S J Papworth

INSPECTOR